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U.S. Congress, House BEFORE
COMMITTEE ON ARMED SERVICES
OF THE
HOUSE OF REPRESENTATIVES
ON
**SUNDRY LEGISLATION AFFECTING THE
NAVAL AND MILITARY ESTABLISHMENTS**
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[No. 177]

FULL COMMITTEE HEARINGS ON H. R. 774 AND H. R. 2575

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D. C., Tuesday, July 8, 1947.

The committee met at 10 a. m., Hon. Walter G. Andrews, chairman, presiding.

The CHAIRMAN. Gentlemen, the committee will be in order.

The chief business of this morning is a bill from Mr. Elston's committee, the military-justice bill. But I understand that Mr. Anderson of California desires to report a minor bill, H. R. 774, of Mr. Bland's. Is that correct?

Mr. ANDERSON. That is correct.

The CHAIRMAN. I will yield to Mr. Anderson of California.

REPORT BY MR. ANDERSON, CHAIRMAN, SUBCOMMITTEE NO. 6, PROCUREMENT AND SUPPLY

Mr. ANDERSON. Mr. Chairman and members of the committee, I have a brief report here on H. R. 774, introduced by our colleague, Congressman Bland, of Virginia. We were unable to obtain committee prints for the amended bill, but for the purpose of the record I will read the amendments this morning.

The purpose of H. R. 774, introduced by Mr. Bland, of Virginia, is to extend to the Secretary of the Treasury the authority heretofore exercised by the Secretaries of War and of the Navy under legislation enacted in 1896.

The earlier act referred to permits the service Secretaries, in their discretion, to loan or give obsolete or condemned combat material to certain designated veterans' organizations and other nonprofit institutions.

The War and Navy Departments have no objection to the extension of this authority to the Secretary of the Treasury. However, certain objections were raised by both services with respect to the language of the bill as introduced. Accordingly, the subcommittee requested the departments to confer together for the purpose of working-out mutually suitable amendments. This they have now done.

As originally drafted, the language of the bill is identical with that of the 1896 act, as amended, save for the inclusion of the Secretary of the Treasury and the addition of section 2. The present law describes the equipment which may be loaned or given away as follows: "Condemned or obsolete ordnance, guns, projectiles, books, manuscripts, works of art, drawings, plans, models, and other condemned

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or obsolete material." The War Department feels that this language is subject to a narrow interpretation which would exclude types of material other than those covered by the specific classes enumerated. Considering the fact that this law was passed before the appearance of tanks and aircraft, it appears that the basic statute may have intended to provide the then current types of combat material for historical, ceremonial, or exhibitional purposes. It is not felt that the language is broad enough here to include many modern-day weapons which would have value for these same purposes.

Accordingly, upon the recommendation of the War Department, the following amendments were adopted:

On page 2, in lines 9 and 10, strike out the words "ordnance, guns, projectiles" and substitute in lieu thereof the words "combat material".

On page 2, in line 10, strike out the comma after the word "plans" and substitute in lieu thereof the word "and".

On page 2, in line 11, strike out the following: ", and other condemned or obsolete material".

The Navy Department's objection was based upon the fear that section 2 of the bill might be construed as repealing Public Law 649 of the Seventy-ninth Congress, under which the Secretary of the Navy now possesses authority much broader in scope, both as to categories of material and possible donees, than that granted in 1896 act. Accordingly, the subcommittee has amended section 2 to read as follows:

SEC. 2. The Act of May 22, 1896, as amended, shall not be construed as altering, amending, or repealing the provisions of any other law under authority of which the President, the Secretary of War, the Secretary of the Navy, or the Secretary of the Treasury may dispose of Government material.

That, Mr. Chairman, is my report, and I suggest the bill be favorably reported to the House.

The CHAIRMAN. Is there any discussion?

Mr. VAN ZANDT. What is the bill?

Mr. ANDERSON. Seven hundred and seventy-four.

The CHAIRMAN. Well, a majority of the members have heard the report. Without objection, the bill will be reported favorably.

Gentlemen, unfortunately, the House meets at 11 this morning, but I assume we can sit until a quarter past 11 without any interruption. There is another small bill that is awaiting report, but I am going to forego that at the moment because this meeting was called particularly to hear a report on the military justice bill.

I might also say that it had been the intention to have an executive committee meeting this morning on the question of inspection trips. The sheets that have been turned in by the membership have been analyzed by the staff. Mr. Brown has been designated to pursue the matter further with those who desire to go to the Pacific, and Mr. Blandford, for those who desire to go to Europe. Sometime this week it is hoped that Mr. Brown will be able to arrange a meeting, maybe along in the latter part of the afternoon, and Mr. Blandford similarly with the other group, in order to get the ideas of the groups as to the time element; that is, when they prefer to make the trips. A little conference will be necessary on that. They will then take it up with the Army and the Navy.

The Chair will now yield to the gentleman from Ohio, the chairman of subcommittee No. 11, Mr. Elston. Before doing so, I may say that last week Mr. Short, as acting chairman, indicated to the War Department that he would permit the reading of two letters addressed to him. I talked with Mr. Short last night and confirmed that. So, after Mr. Elston's report, I am going to turn these letters over to Mr. Smart for reading, whenever Mr. Elston designates.

Mr. ELSTON. Mr. Chairman, if it is agreeable, I would like to have the letters read first because the report I make will comment on those letters.

The CHAIRMAN. All right, without objection the letters addressed to Mr. Short, as acting chairman last week, in accordance with his agreement, will be read. They are from the Secretary of War and the Chief of Staff, General Eisenhower, with a forwarding letter by General Royall.

Mr. SMART. The first letter is [reading]:

WAR DEPARTMENT,
Washington, D. C., June 30, 1947.

Hon. DEWEY SHORT,

*Acting Chairman, Committee on Armed Services,
House of Representatives, Washington, D. C.*

DEAR MR. SHORT: I understand that your committee is about to consider the question of separation of command and judicial authority in the Army and the creation of a separate Judge Advocate General's Department, with its own promotion list, and with independent authority to mitigate or remit certain types of sentences.

My views upon these questions have heretofore been presented during the hearings before your Legal Subcommittee, at which time I pointed out the far-reaching advances advocated by the War Department in conferring judicial authority on the Judge Advocate General and enlarging his power. Those provisions have my earnest approval. I feel, however, that further enlargement of such powers, with consequent curtailment of the authority of field commanders, would be a serious mistake.

I also feel that it would be a fundamentally unsound policy to confer upon any official in the War Department authority of decision entirely independent of the Secretary of War, with the latter having no power to control or direct.

I am transmitting herewith for the consideration of your committee letters addressed to you by the Secretary of War and the Chief of Staff, setting forth their respective views on these matters.

Sincerely yours,

KENNETH C. ROYALL,
Under Secretary of War.

The second letter is [reading]:

WAR DEPARTMENT,
THE CHIEF OF STAFF,
Washington, D. C., June 30, 1947.

Hon. DEWEY SHORT,

*Acting Chairman, Committee on Armed Services
House of Representatives, Washington, D. C.*

DEAR MR. SHORT: Discussion on the floor of the House of Representatives reported in the Congressional Record indicates that your committee intends to consider a proposal that judicial and command authority in the Army be completely separated. I understand that a further proposal would confer upon the Judge Advocate General independent power to mitigate or remit certain types of sentences.

I feel very strongly that this would be a serious mistake. A commander of troops carries grave responsibility which is enormously enlarged in time of war. This responsibility can be fully discharged only by the exercise of commensurate authority without which the effectiveness of the commander

will be seriously impaired. I am completely confident that every experienced combat commander will agree with me that any other system would produce ruinous results.

I am convinced that this conclusion is valid under either peacetime or wartime conditions. It is manifest, however, that it is both undesirable and impracticable to provide one system of procedure for use in peacetime and a different one for use in war.

After long and careful study I have come to support the provisions of H. R. 2575, now pending before your committee, which will provide a complete system of judicial review, thorough, impartial, and free from command influence, and will also effectively proclude interference with the judicial process. I firmly believe, however, that further curtailment of command authority would be both unsound and unsafe. The new proposal would repose in a staff officer, completely removed from any responsibility for winning a war, complete authority to act independently in a matter of the utmost importance to victory. Field commanders will always accept such decisions from the Secretary of War or the President, recognizing in those two officials a responsibility equal to their own in maintaining order and discipline—particularly battle discipline. To empower a separate staff agency to act independently in this matter could not fail to engender friction and dissatisfaction disastrous to the welfare of the service. This can be completely avoided administratively by proper indoctrination of all concerned.

Sincerely,

DWIGHT D. EISENHOWER.

The third and last letter is [reading]:

WAR DEPARTMENT,
Washington, June 30, 1947.

HON. DEWEY SHORT,

*Acting Chairman, Committee on Armed Services,
House of Representatives, Washington, D. C.*

DEAR MR. SHORT: In the course of the debate on H. R. 3830 as reported in the Congressional Record for June 25 one attempt was made to amend the promotion bill with respect to judge advocates. The proposed amendment was defeated but it was indicated that a similar amendment would be presented to the Armed Services Committee when it considers H. R. 2575.

I am very happy that the House rejected the amendment and passed H. R. 3830 as reported by your committee. To include promotion provisions in H. R. 2575, in my opinion, would be extremely bad. The Officer Personnel Act (H. R. 3830) was submitted to your committee after an exhaustive research and study of many months and your Personnel Subcommittee spent many weeks upon it before finally reporting the bill to the whole committee. The proposal to establish a separate promotion list for the Judge Advocate General's Department was considered very carefully both by the Under Secretary and myself. The decision to retain the present single promotion for the Army was reached for these reasons:

The Army had separate promotion lists for each branch until 1920. That system was a complete and utter failure. Under it there was continual and constant political maneuvering by officers of the various arms. The Army was torn by internal jealousies and bickering. No single reform in our promotion laws has ever accomplished as much good as establishment of the single list in 1920. It unified the Regular Army and built a proper spirit in its Officer Corps. To set up a separate promotion list for the Judge Advocate General's Department can have only one purpose—provide better promotion possibilities for its officers—than for the officers of other branches. Should this succeed, judge advocates will not gain but will lose. They will lose the esteem and good feeling of their brother officers. The Army and the Nation will also lose because one break in the separate list will start anew the jealousies which existed prior to World War I. Congress will be under constant pressure to set up other separate branches and then, to enhance personal opportunities, there will be constant efforts to increase the size of specific branches in order to create more positions in high rank. This is not theory; this was the actual situation prior to 1917.

The proponents of a separate promotion list for the judge advocates apparently do not realize the effect it would have on most individuals in that Department. Its officers are not distributed evenly through all the grades. There

are no lieutenants in it at all; 37 percent of its present officers have between 21 and 28 years' service; over 50 percent will be in the grade of lieutenant colonel when initial promotions have been made. With a separate promotion list for such a small group the grade of colonel having initially been filled there would then result great stagnation for all officers below that grade.

A great virtue of a single list containing 25,000 officers is that abnormal distribution of officers in the several branches can be taken care of. The number of colonels for each branch does not have to be exactly proportional to the number in each branch but can be made proportional to the numbers in each branch who are in the next lower grade. Thus, if in a certain year group of lieutenant colonels up for promotion to the grade of colonel there are 10 more judge advocates than their proportional number should be, there is no difficulty occasioned because in some other branch or branches there will be a corresponding shortage and all qualified judge advocates can be promoted. However, if the officers of that small branch are on a separate list then when the "hump" of that list becomes eligible for promotion a large and undue attrition must take place. Following that there will be a great surge of promotions and then stagnation again. This condition was alleviated for the Army as a whole by the single list and the new promotion law has been specifically drawn up to avoid it.

Not only would the inclusion of promotion provisions in H. R. 2575 be extremely bad but any attempt to specify numbers in the Judge Advocate General's Department without also increasing the authority strength of the Regular Army would be harmful. Adding to the number of judge advocates does not decrease the load on combat officers and those of the technical arms and services. Therefore, if a large increase in the size of the Judge Advocate General's Department is proposed it must include provision for increasing the total size of the officer corps. Section 502 (a) of H. R. 3830 provides that the authorized active-list commissioned strength of the several branches of the Army shall be determined from time to time by the Secretary of War within the authorized strength of the Regular Army. This provision was inserted in order to insure proper coordination in the distribution of available regular officers. This is not a static problem but changes with organization, weapons, and missions. I feel it essential that the flexibility granted in H. R. 3830 not be nullified by prescriptions placed in other bills.

The hearings on H. R. 2575 and remarks made on the floor during the debate on H. R. 3830 indicated that one reason for proposing changes in the promotion system for judge advocates was the fact that virtually all witnesses except those from the War Department urged such changes. These witnesses represented various organizations. None of them could or did pose as expert witnesses except in matters of law. They certainly did not represent any expert opinion on Army organization or personnel. Few problems confronting the War Department are so complex and involved as the matter of promotion for career Regular officers. Those members of your committee who labored so long and so arduously on H. R. 3830 can testify to that. The promotion bill was drawn up to assure every officer of equal opportunity and to give the Army an adequate rank structure. Piecemeal changes in it on behalf of single groups will do irreparable harm to the Army because it will be an opening break in what we believe is the best promotion legislation ever passed by the House.

ROBERT P. PATTERSON.

Secretary of War.

The CHAIRMAN. Mr. Elston.

REPORT BY MR. ELSTON, CHAIRMAN, SUBCOMMITTEE NO. 11, LEGAL

Mr. ELSTON. Mr. Chairman, before proceeding to make any statement about the provisions of the bill, I want to first of all express appreciation to the members of my subcommittee who worked so long and so arduously in the perfection of this bill. We held a great many meetings and our attendance was excellent. We heard a lot of witnesses. We feel that the bill we have presented to the committee is a sound one. We are grateful to Mr. Smart for the assistance he gave us, and to General Green, General Hoover, and Colonel Dinsmore, from the War Department, who sat with us in our meetings and gave us very valuable assistance.

Now, some reference has been made to the promotion bill which has been passed, H. R. 3830. I might say at the outset that our purpose is not to start in to amend that bill. At the time that bill was before this committee, you will recall I mentioned the fact that we were considering in our subcommittee the possibility of a separate Judge Advocate General's Department for the Army. I believe the conclusion at that time was that regardless of what was done with the promotion bill it would not be through Congress by the time our bill was reported and that the matter could be worked out in conference. The bill has passed the House but has not passed the Senate, so that situation still prevails.

We thought for a time we might consider both the Navy and the Army bills together, but after finishing the Army bill and receiving the Navy bill from the Navy Department, we came to the conclusion that the situation was so entirely different in the two Departments that we better proceed with the Army bill and take up the Navy bill at a later date.

I might say that our bill was reported unanimously. There was a dissenting vote with regard to the separation of the Judge Advocate General's Department from the other branches of the service, but with that one dissenting vote the bill was unanimously reported by our committee.

Now, Mr. Chairman, in order that the members may have a full appreciation of the importance of the legislation which is presented here today, I consider it both advisable and necessary to relate, in a general way, the events which have brought the subject of military justice to our attention.

During the course of World War II approximately 11,000,000 men saw service in the United States Army, and of that number approximately 80,000 were convicted by general courts martial. A far larger number were convicted by special courts martial. Even before the cessation of hostilities it was apparent to the War Department and to the Congress that a detailed study of the Army system of justice was appropriate. In fact, it was necessary. Accordingly, in 1944 and 1945, the War Department sent Col. Phillip McCook, former prominent New York jurist, to various theaters of operation to conduct such studies. Additional reports were submitted to the War Department from other sources.

Within a few months after the end of hostilities, the matter was brought to the attention of the American Bar Association, and on March 25, 1946, the War Department Advisory Committee on Military Justice was appointed by order of the Secretary of War. The committee, under the chairmanship of the Honorable Arthur T. Vanderbilt, and referred to as the "Vanderbilt committee," consisted of nine outstanding lawyers and Federal jurists from eight States and the District of Columbia. From March 25, 1946, until December 13, 1946, a period of almost 9 months, the members of that committee engaged in studies, investigations, and hearings, and availed themselves of voluminous statistical data of the Judge Advocate General's Department and other sources. At full committee hearings in Washington, the Secretary of War, the Under Secretary of War, the Chief of Staff, the Commander of the Army Ground Forces, the Judge Advocate General, the Assistant Judge Advocate General, numerous other offi-

cers, and the representatives of five veterans' organizations were heard. There were numerous personal interviews, supplemented by letters and the digesting of 321 answers to questionnaires from both military and nonmilitary personnel. Additional widely advertised regional public hearings were held at New York, Philadelphia, Baltimore, Raleigh, Atlanta, Chicago, St. Louis, Denver, San Francisco, and Seattle. The subsequent report of the committee was based on these extensive inquiries.

During the Seventy-ninth Congress a Military Affairs subcommittee under the chairmanship of our colleague, Hon. Carl T. Durham, devoted more than 1 year to detailed study of the Army system of justice. The report of the Durham committee has been thoroughly considered in our deliberations. I might say, interpolating, Mr. Chairman and members of the committee, our committee considered not only H. R. 2575, but H. R. 576, introduced by Mr. Durham; and the bill we report this morning contains provisions of H. R. 2575, amended somewhat, plus one provision from Mr. Durham's bill.

Additional studies have been conducted by special committees of the American Legion, VFW, AMVETS, AVC, the New York County Lawyers Association, the War Veterans' Bar Association, the Judge Advocate Generals' Association, and the Phi Alpha Delta Law Fraternity. The reports and recommendations of each of these groups were made available to us and representatives of each of the organizations appeared before our committee in public hearings in support of their recommendations. Other witnesses, who had particular knowledge of the subject by virtue of their service and experience in the recent war, were heard.

In our opinion, the combined efforts of these organizations and individuals represent the most comprehensive study of military justice that has been conducted in the history of our country. Any discussion of the technical aspects of the bill would probably result in more confusion than may exist at the present. In general, the main accomplishments of the bill may be outlined as follows:

1. Enlisted men have been authorized to sit as members of courts martial.

2. It subjects officers to trial by special courts martial.

3. It prohibits the unlawful influence of courts martial or the members thereof.

4. Warrant officers are authorized to sit as members of courts martial.

5. An accused, if he so desires, may have counsel at the pretrial investigation.

6. Authority to grant a bad-conduct discharge has been granted to general and special courts martial.

7. The review and appellate provisions have been strengthened.

8. A lesser punishment than death or life imprisonment for murder or rape have been provided.

9. A lesser punishment than dismissal from service for officers drunk during time of war has been provided.

10. The authority of commanding officers under the one hundred and fourth article of war has been increased so far as it pertains to officers but not to enlisted men.

11. The clemency power of the Judge Advocate General has been increased.

12. An independent Judge Advocate General's corps has been established.

From the foregoing general summary, the following points merit additional consideration.

1. Should enlisted men be authorized to sit as members of a court martial in the trial of other enlisted men?

The War Department agrees that they should, at the option of the appointing authority. Our committee agrees that they should, at the option of the defendant and has amended section 3 accordingly. We seriously doubt that the inclusion of enlisted men as members of the court will benefit enlisted men who are defendants; however, the choice is properly a right of the defendant. Once having exercised that right he must assume the responsibility for the results of his choice. I might say there that no less than one-third of the court shall consist of enlisted men—

Mr. KILDAY. If he requests enlisted men, it must be no less than one-third.

Mr. ELSTON. Yes, if he requests enlisted men.

2. Should the trial judge advocate and defense counsel be attorneys, if available?

There is unanimous agreement that such personnel must be attorneys and the War Department has so provided in section 8, pages 5 and 6.

3. A greater equality in the treatment of officers and enlisted men should be provided.

The committee agrees that a greater equality must be attained and have accordingly amended section 10, page 7, making officers subject to trial by special courts martial. Heretofore, the President has had authority to exempt such classes as he may designate from trial by special and summary courts martial and under that authority has exempted officers from trial by these two courts. As a result, officers have been triable by general courts martial only. This resulted in a reluctance on the part of superior commanders to subject officers to trial and possible dismissal for comparatively minor offenses. As a result officers would escape punishment for the same offenses for which enlisted men were tried and convicted. That I think we will agree created a very bad situation in the Army.

Section 21, page 16, provides that, in time of war, an officer, in lieu of a dishonorable discharge, may be reduced to the grade of private.

Since a commanding officers authority under the fourth article of war has been increased in this bill so that he may forfeit one-half of an officers pay for 3 months, rather than 1 month, a far greater restraint on officers will be the inevitable result. Enlisted men are not subject to this increased power of forfeiture.

4. Should the pretrial investigation be made mandatory and should the accused be furnished counsel at such investigations?

This question presents a more difficult problem than is apparent. In our consideration of the subject of military justice we have been guided by the principle that the basic rights of an accused should be protected without encumbering the military system in such a maze of technicalities that it fails in its purpose. Upon this premise we have concluded that an investigation should precede every general courts-martial trial but that the investigation shall be considered sufficient if it has substantially protected the rights of the accused.

To hold otherwise would subject every general courts-martial case to reversal for jurisdictional error on purely technical grounds.

Our committee has added another safeguard in amending section 22 by providing counsel in every pretrail investigation upon the request of the accused. As a matter of custom the Army already provides such counsel in serious cases. It now becomes a matter of right, at the option of the accused.

5. A more adequate review should be provided.

Any system of judicial review is complicated, technical, and difficult to understand. The principal provisions of judicial review are presently contained in A. W. 50 and A. W. 50½. In an attempt to clarify these sections they have been rewritten by the War Department in section 26 of H. R. 2575. The new section provides for a new judicial council of three general officers, in addition to the present board of review, and defines the action to be taken upon cases examined. The section makes explicit the finality of sentences of court martial, and for the first time, authorizes reviewing authorities to weigh the evidence in addition to determining the law. Absence of this authority heretofore has been a common cause of criticism.

Under the present Army system it is possible for a defendant to be convicted and dishonorably discharged without having had an appellate review of the dishonorable discharge portion of his sentence. Not only is it possible, there have been many such cases resulting in extensive criticism of the Army system. The War Department has corrected this situation in section 26 (a) of the bill.

The question of clemency may properly be considered in this connection and the committee finds itself at variance with the War Department position as set out in section 26 of the bill. The bill provides that "the Judge Advocate General shall have the power to mitigate, remit, or suspend the whole or any part of a sentence in any case requiring appellate review under section 26 (A. W. 50) and not requiring approval or confirmation by the President," such power to be exercised under the direction of the Secretary of War.

The practical result of this provision is that the Judge Advocate General becomes merely a recommending officer. It is presumed that the most capable legal man in the Army will be in the Judge Advocate General's Department and it is certain that the complete appellate review of all such cases will be conducted in his Department. It necessarily follows that, except for the trial court, the Judge Advocate and the reviewing officers in his Department have a more intimate knowledge of the facts and the law of the case, than any other individual or group. While the War Department does not agree, it seems only proper to us that the Judge Advocate's authority on clemency matters should be commensurate with his responsibility for appellate review, and we have amended section 28, on pages 29 and 30, accordingly.

6. Should "command influence" with respect to the judicial acts of courts martial military commissions, and the members thereof, be curtailed?

There is unanimous agreement that "command influence" has been improper and must be stopped. In addition to its provisions in section 33 of the bill, the War Department has accepted section 10½

of the Durham bill as an amendment. We consider these provisions adequate to stop this phase of "command influence."

With the very few exceptions which I have mentioned there is complete agreement between our committee and the War Department on every section of the bill, as amended, through section 45. This brings us to the final and by far the most important question which our committee has considered:

Should an independent Judge Advocate General's Corps, with a separate promotion list, be established?

The War Department opposes the establishment of an independent Judge Advocate General's Corps; however, our committee, with one dissenting vote, favors such a corps. It is important to note that every organizational representative and every individual who testified before the committee, except War Department witnesses, not only favored but urged the establishment of an independent Judge Advocate General's Department.

Under present law "command" has an abnormal and unjustified influence over military justice. In opposing our decision the War Department stresses the necessity for preserving proper discipline and for giving line commanders authority which is commensurate with their responsibility. We fully agree that discipline is of the utmost importance and must be preserved; however, we feel equally certain that in the administration of military justice there is a point beyond which the considerations of justice are paramount to discipline. Under present law and under this bill, as amended, "command" has abundant authority to enforce discipline. We haven't taken all the power away from them, by any manner of means. The command officer refers the charges for trial, convenes the court, appoints the trial Judge Advocate, law member and defense counsel who must now be qualified personnel of the Judge Advocate General's Department and, after the trial reviews the case with full authority to approve or disapprove the whole or any part of the sentence.

We contend that "command" should ask for nothing more in the furtherance of discipline. At the conclusion of a trial, under the present system, the same officers who conducted the case return to the command of a line officer who has full authority over their efficiency ratings, promotion recommendations, leaves, and duty assignments. These officers, many of whom have families and have chosen the Army for a career, would be less human if they ignored the possibilities of such influence. We contend that those who are charged with the impartial administration of military justice must have sufficient freedom of judicial determination to meet the responsibility.

I would like to summarize the War Department's criticism.

1. We have been informed of the strenuous objections of the Secretary of War, the Under Secretary of War, and the Chief of Staff with reference to the creation of an independent Judge Advocate General's Corps. I wish to state to the full committee that with one exception, the committee was fully aware of all of these objections prior to its final determination of this question. The one exception referred to is the criticism of the Secretary of War with reference to the effect that such a corps would have upon the basic provisions of the new promotion bill as embodied in H. R. 3830 and recently favorably considered by the Armed Services Committee and the House. The Sec-

retary's first objection is that the creation of a separate promotion list can have only one purpose—provide better promotion possibilities for its officer than for the officers of other branches, and that the creation of such a list would result in ill feeling between judge advocate officers and other officers and would constitute a break in the present structure which should not be tolerated. Upon this point we disagreed. It seems apparent that "command" considers the Judge Advocate Department to be composed of a nonprofessional group whereas we are of the opinion that the Judge Advocate's Department must be a professional group especially trained in order that it may properly perform its function.

We have been reliably informed that approximately 90 percent of the field work of the Judge Advocate's Department consists of matters directly related to military justice and that more than 50 percent of its work in Washington is of the same nature. Another considerable function consists in the investigation and adjustment of claims. It can hardly be expected that unqualified personnel can adequately handle these assignments. If they could this subject would not be before the committee today. The committee may be assured that at no time has it been our intencion to create a special corps which would give special consideration and unusual advantages to any officer or group of officers. In advocating an independent corps we neither ask for nor expect to receive any advantage in promotion or otherwise that is not shared by every other officer of the Army. The War Department apparently does not view judge advocate officers as command officers. They do not command troops and so far as we know, no judge advocate officer has ever risen to the office of Chief of Staff or any other comparable position in command. The recognition of this group as being a professional group should cause no greater inconvenience than is the case with doctors, dentists, veterinarians, chaplains, nurses, and medical specialists.

2. The Secretary states that great stagnation would result for all officers below the grade of colonel since 50 percent of the officers will be in the grade of lieutenant colonel when initial promotions have been made. It is pertinent to repeat the Secretary's statement that 37 percent of the present officers have between 21 and 28 years' service and that the group as a whole are comparatively old. We fully agree with the basic provisions of the promotion bill and do not desire to create any unusual problems by our present action. In this connection the following points should be kept in mind:

- (a) The present age group is old and must soon retire from service.
- (b) The Secretary of War is not required to fill all vacancies now and as a matter of fact, it is not anticipated that he shall.
- (c) The humps in various grades would be no way abnormal than are now present in the Chaplains, Dental, and Veterinarian Corps and particularly, to the Air Corps.

(d) Expansion of the corps to its anticipated size will be slow at the very best and officers will be difficult to obtain.

3. The Secretary states that the creation of an independent corps will not decrease the load on combat officers. We think that the creation of an independent corps would inevitably result in lessening the burden on combat officers, rather than increasing it. It is an indisputable fact that throughout the war, the trial judge advocates, law members and defense counsels in addition to officers for the investigation

of claims, were largely drawn from officers of the line. This resulted in those officers having a dual function and the testimony before our committee made it very apparent that the added function of military justice and claims was held to be of secondary importance. Under Public Law 281, Seventy-ninth Congress (December 1945), the Regular Army strength was increased from 15,700 to 25,000. At that time the Judge Advocate General was authorized 121 officers and under the new law he was permitted an increase of 21 additional officers to a total of 142. At that time there were several hundred applications for admission into the Judge Advocate General's Department but only a very small number were nominated.

Those who failed of selection returned to civilian life and as a consequence when the limit was removed under Public Law 670 in April of 1946, and the authorized officer strength increased to 50,000, there were exceedingly few officers available to fill the vacancies in the Judge Advocate General's Department. Two hundred and eighty Regular Army officers are on duty in the Judge Advocate General's Department. In March of this year, approximately 750 officers were on duty in the Department and a planning figure of 600 had been submitted for the departmental needs of the present Regular Army strength. When the War Department introduced H. R. 2575, they stated that it would require 937 officers to accommodate the increased need for legally qualified officers. It has been repeatedly stated that the authorized officer strength of 50,000 in the Regular Army will not be reached for perhaps 10 years. It is anticipated that this strength will be approximately 38,000 by the end of this year. We should bear in mind there are now on duty 132,000 officers and that not less than 80,000 will continue to be needed in the foreseeable future. Some may say that to create an independent Judge Advocate General's Corps will only serve to renew the pressure on Congress from other branches of the service, and particularly to renew the questions presented by the Corps of Engineers in the consideration of the promotion bill. Until the proper function of the Corps of Engineers can be determined, it is not a proper matter for discussion. It is well to note that in the Senate consideration of S. 758, the unification bill, it has been impossible to arrive at any decision as to the proper logistical function of the Corps of Engineers. Pending determination of that question by the proper authorities and subject to future legislation on the subject, we reiterate that that question raises no conflict with the creation of an independent Judge Advocate General's Corps.

It is difficult to determine the costs which would be incurred by the enactment of this legislation. The War Department has estimated that the enactment of H. R. 2575 would require a total of 937 officers and a comparable number of enlisted men, at a cost of \$3,200,000. H. R. 2575 is a War Department bill and it is assumed that, if enacted, adequate personnel would be provided as rapidly as they become available. Our amendment proposes a corps of 750 officers, and warrant officers and enlisted men in such numbers as the Secretary of War may determine. In any event we are of the opinion that the establishment of an independent Judge Advocate General's Corps would cost no more than the enactment of the original provisions of H. R. 2575, as proposed by the War Department.

We are now on the threshold either of universal military training or of the maintenance of a professional army at least five times larger

than that maintained before the last war. The future army, no matter how it may be raised, will be composed of the physically fit youth of the country. The first contact with any judicial system for the overwhelming majority of these young men will be their experience with the administration of military justice. We believe that it is our duty, so far as lies within our power, to see that the system to which they are exposed is reasonably designed to achieve justice. The system now in effect, together with the changes recommended by the War Department in H. R. 2575, cannot guarantee the result desired.

Mr. Chairman, we respectfully submit that the bill, as amended, will accomplish the desired result and accordingly request the favorable consideration of the full committee. And to bring the matter before the committee for discussion, Mr. Chairman, I move a favorable report on H. R. 2575 as amended by the subcommittee.

The CHAIRMAN. The Chair desires to commend the chairman upon the very unusual scope of the report, both factually and revealing the work done not only by this subcommittee but by the many other organizations to which you referred. Is there any discussion?

Mr. KILDAY. Mr. Chairman——

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. I don't know how much time we have for discussion. The CHAIRMAN. Well, we will proceed so far as we can.

Mr. KILDAY. Mr. Chairman, I want to make it clear that I agree with the report that has been filed by the chairman, with one possible exception. I agree that the bill is adequate to secure the necessary adjustments in the administration of military justice. The one question that I am in doubt about is as to the creation of a separate Judge Advocate General's Corps. By that I don't mean necessarily that the Judge Advocate General should not have all of the other powers that he is given in this bill. The thing I refer to is the establishment of a separate Judge Advocate General's Corps, with a separate promotion list. I don't believe it is quite accurate to say that in the subcommittee the vote was unanimous with one exception. There was a bare quorum of the subcommittee present, as I recall it. I don't know how those absent would have voted had they been present, but that was the situation. I was not satisfied with the consideration that we were able to give this particular question because it was the last question to come before the committee and we had very little time to devote to it. As a matter of fact, the amendment carried in the bill was not before the subcommittee; nor was it discussed by the subcommittee. The vote that we took—I believe the chairman will confirm—was as to whether we should report to the full committee the substance of the principle contained in the Durham bill, H. R. 576. Thereafter, that amendment which now appears in the bill was drafted. That is correct, isn't it?

Mr. ELSTON. That is correct. The amendment was drafted in legal form.

Mr. KILDAY. That is right.

Mr. ELSTON. But it certainly does carry into effect the exact thing agreed upon in the committee.

Mr. KILDAY. With a possible exception of the numbers.

Mr. ELSTON. Let me state that the numbers correspond with the promotion bill, H. R. 3830, in those percents.

Mr. KILDAY. At that time we did not know what the number to be assigned to the Judge Advocate General's Department would be—nor as to the percentage distribution. I believe it is correct that I was the only member of the subcommittee present that day who had also served on the Personnel Committee which had drafted the promotion bill, H. R. 3830, that was up for consideration that day. We reached this point a very few minutes before we had to go to the floor to take up H. R. 3830, so we did not get to give it that proper consideration. Now, being a member of that Subcommittee on Personnel, I was thoroughly familiar with the efforts of other branches of the service to secure separate promotion lists. We had them not only from the engineers, as the gentleman from Ohio has mentioned, but I believe also the Dental Corps wants a separate promotion list from the Medical Corps. They are now included with the Medical Corps. They have requested a separate promotion list from the Medical Corps. There are other branches of the service that would like to have separate promotion lists. After the many weeks that we put in on the promotion bill, we came to the conclusion that the proper system of promotion was that in H. R. 3830, with the single promotion list.

Now, it is true that the witnesses who came here and the organizations who testified on this matter advocated a separate Judge Advocate General's Corps. On the other hand, it is also true that the committees of those various organizations were composed, with the exception I guess of the American Bar Association, almost exclusively of men who had served in the Judge Advocate General's Department during the war. They were men whose military experience had been with the Judge Advocate General. I am sure they were sincere in their review that separation of the Judge Advocate General's Corps was the solution of the problem. But I am not convinced that it is. Some human being is going to have to be trusted with military justice. It is either going to be through the chain of command and up to the Chief of Staff or it is going through a separate Judge Advocate General's Department and up to the Judge Advocate General. In either instance, you are going to have to trust somebody with the administration of military justice. With the men I have seen as Chief of Staff and Judge Advocates General, I don't know that you would lose anything by leaving it to the Chief of Staff in connection with military justice, supervised by the Secretary of War and the Under Secretary of War—civilians—who would have the final say and the final confirmation.

I doubt very much if we ought to go into this without hearing further from combat commanders. The subcommittee heard from General Collins, who was very strongly opposed to this and recited some of his experiences as a combat commander in the administration of military justice. He was the only combat commander that we heard.

Now, in view of the fact that General Eisenhower takes such a strong position against it, as to the manner in which it would function in the field under combat—we are making a very new departure here—I feel that the full committee, especially in view of the inadequate consideration I feel that the subcommittee was able to give to this particular portion, and I am talking about the separate Judge Advocate General Corps, would be fully justified in hearing further from combat commanders on this question.

Mr. ELSTON. Mr. Chairman—

The CHAIRMAN. The Chair asks the gentleman from Texas if he has any amendment in mind, to accomplish his purpose?

Mr. KILDAY. I thought I would make the suggestion first that we do hear from other combat commanders and General Eisenhower, if he is able to come. He stated here in a letter his position on it. Inasmuch as the Chief of Staff, whoever he may be, is going to have to live with this thing and administer it, I think the committee should hear and have subject to cross-examination the men who can give us the basis of their objections. It is evident that there is very serious objection from the Chief of Staff and from the Secretary of War. We have had that objection expressed to us only in a letter. It may be that they can thoroughly justify their objection. It may be that we would be convinced that their objection is more apparent than real after we had heard from them. I think it is worth our while to take a little time to hear from them.

Mr. ELSTON. Will the gentleman yield?

Mr. KILDAY. Yes.

Mr. ELSTON. Mr. Chairman—

The CHAIRMAN. Mr. Eliston.

Mr. ELSTON. It is true we had only one combat commander before us, but he was a brilliant officer. General Collins has had a tremendous amount of experience. He made an excellent witness before the committee. My impression is that before he came over here to testify, he was assigned to testify by General Eisenhower.

Mr. KILDAY. Of course I don't know—

Mr. ELSTON. And was stating the position of combat commanders generally.

I might say to the gentleman from Texas that the reasons he gave for saying there should not be an independent Judge Advocate General's Course were easily answered. He cited some cases of where a commanding officer had some persons before him who had committed various offenses and he did certain things. If he had not had the authority to do that, discipline might have broken down. He made them better officers by reason of it, and so forth. But he still has that power. He had then the power to do the very things that he said. It hasn't been taken away from him. The separation of the departments doesn't take away that power, because he still has the power of review. He convenes the court. He doesn't have to file a charge at all, if he doesn't want to.

Mr. KILDAY. General Collins' testimony detailed a number of specific instances that had happened in the Pacific, and I think some after he had gone to Europe, with reference to military justice. As you say, some of them were very easily answerable and even under this proposal he could have taken the same action that he took in those instances, but there are other instances in which I don't believe he could have—for instance, the instance he cited on Guadalcanal, when he had men that he was preferring charges against. He issued orders that the guardhouses should be emptied and all of the men returned to their units, with instructions to their commanding officers to observe them in combat and report on their conduct in combat. There he was able to drop all of the charges that had been preferred and to restore them to full military status.

Now, as I conceive the operation of this system set up under this amendment, his function would be preferring charges. When he

had preferred charges, the man would pass from his jurisdiction to the jurisdiction of the Judge Advocate General, in the administration of military justice, and would then no longer be under the jurisdiction of the combat commander. So, in that instance he would not have been able to take the action he did take.

Mr. ELSTON. Will the gentleman yield?

Mr. KILDAY. Yes.

Mr. ELSTON. I think we can assume the Judge Advocate General would be just as anxious to win the war as the combat commander.

Mr. KILDAY. There is no doubt about that.

Mr. ELSTON. He could certainly cooperate with any commanding officer to do that very thing, if it was considered necessary in his judgment.

Mr. KILDAY. In the field you are not going to have the Judge Advocate up there with the troops, when they are going into combat. The division commander is out there with them. It is a question of the practicality of the administration of military justice. Once the charges are preferred, I can't imagine the division commander maintaining any close supervision over the man that he has filed charges against, when the further administration of it passes to another functionary of the Army. He is through with it.

Mr. ELSTON. Wouldn't he be able, if he had filed charges, to withdraw the charges at any time before the court had convened?

Mr. KILDAY. I don't know whether he would or not. I doubt that seriously as a practical proposition.

Mr. RIVERS. Mr. Chairman—

The CHAIRMAN. Mr. Rivers.

Mr. RIVERS. Mr. Chairman, as a member of the subcommittee, while I may not have been there at all the meetings—which, of course, is impossible because sometimes there is a conflict—I would like to state now for the record that the chairman had my proxy at all times. Certainly I am in accord with this report. The other day, when I wanted to introduce testimony on that broad personnel bill, containing some 300 pages, the Chair properly ruled that additional testimony could only be given in the event it went back to the subcommittee. I do believe if we now allow the subcommittee to be bypassed, it will break down the subcommittee set-up. We have languished over this thing. It is a difficult proposition. We have had a lot of testimony. One of our members brought out many things which showed that the commanding officers injected their personalities into these things.

Mr. KILDAY. I am not referring to that. That is in the bill, and I endorsed that.

Mr. RIVERS. Wait a minute. That led to our conclusion on these things. I believe, if you will read this report, you will see that the committee has worked hard. We have tried to be fair. We have tried to give these boys a break. I think, if there was ever a bill that should have been considered by this whole committee, it was that personnel bill. It wasn't. It was considered by a subcommittee. It was almost an insuperable task. Now here comes a bill which does depart from certain practices of the Army, but that is our responsibility. I do think we would make a mistake if we just flooded our considerations and our deliberations and say, because certain combat officers did

not have the opportunity to appear before our committee, that they were estopped. The Army took cognizance of their position and sent us a duly designated representative, in the person of General Collins.

The CHAIRMAN. The question is on the motion of Mr. Elston for a favorable report—

Mr. KILDAY. Mr. Chairman, I have a number of amendments. There is a roll call on the floor that we will have to answer. I am going to have to object to a vote being taken at this time.

The CHAIRMAN. In view of the fact that Mr. Kilday of Texas has an amendment which he wishes to offer, the Chair, if it meets with the approval of Mr. Elston, is going to suggest that Mr. Smart, the professional staff member for this committee, submit to each member of the full committee an outline of the amendments to be offered by Mr. Kilday, and that we meet 1 week from today, Tuesday morning, the 15th of July, with the first order of business being to act upon the Kilday amendments and the bill.

Mr. KILDAY. Mr. Chairman, I might say that I will be glad to contact the chairman of the subcommittee and the professional staff member and see if we can't work together and expedite it in every way possible.

The CHAIRMAN. May I ask the gentleman from Ohio as to his position on the matter?

Mr. ELSTON. Mr. Chairman, I think that is a good suggestion, that we go over for another week, so that we have full and ample opportunity to consider any amendments.

I would just like to make this one observation, however, before we go over. I don't believe there is any necessity for receiving additional testimony. I would like to say this, in answering to the gentleman from Texas: Not only could the commanding officer before a trial court has been convened withdraw the charges but even after conviction, under this bill he has power to modify, set aside, reverse, or amend a sentence. If he has a guardhouse full of men and he wants to send them in combat, he can suspend the sentence of every one of them and send them in combat. When they come back, if he wants to set it aside completely or suspend it further, he has the power to do so.

Mr. KILDAY.. Will the gentleman yield?

Mr. ELSTON. Yes.

Mr. KILDAY. I thoroughly endorse the principles of the bill. It just narrows down to a question of whether we have a separate Judge Advocate General's Corps, with a separate promotion list.

Mr. ELSTON. Yes.

The CHAIRMAN. Mr. Kilday will submit a copy of his amendment to Mr. Smart, for submission to the members, with discussion of the amendment and the bill the first order of business at the committee meeting next Tuesday. The committee now stands adjourned until next Tuesday.



FULL COMMITTEE HEARINGS ON H. R. 2964, 3417, 3735, 1544, 2993,
2575

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D. C., Tuesday, July 15, 1947.

The committee met at 9 a. m., Hon. Walter G. Andrews (chairman) presiding.

The CHAIRMAN. Gentlemen, the committee will be in order.

The Chair would like to congratulate the membership upon their unusual presence at 9 o'clock in the morning, and also the Secretary of War and the Chief of Staff whose appearance here at this early hour we appreciate. My best advise is that Congress will definitely adjourn Saturday, the 26th of July, from which it is apparent the only bills which might be reported from this committee today which would have any chance of being acted upon in the House would be those which would normally go on the consent calendar. Therefore, they must be bills upon which there is no disagreement.

The Chair is going to ask Mr. Elston if he would report briefly two bills on transfer of property, if they are ready. Mr. Smart is not here at the moment, so I will wait just a moment—

MR. ELSTON. Mr. Chairman, on those bills I would like to yield to the gentleman from Texas, Mr. Kilday, inasmuch as he is the author of one of the bills.

The CHAIRMAN. I yield to Mr. Kilday for a brief statement on his bill.

MR. KILDAY. Mine is H. R. 2964, which would authorize the Secretary of War to transfer to the regents of the University of Texas of that portion of the San Antonio Arsenal determined to be surplus to the needs of the War Department. The bill was heard by the legal subcommittee. It is reported unanimously to the full committee. The War Department suggested a technical amendment and other than that announced it had no opposition to the bill. The subcommittee adopted three amendments: One that the War Department suggested; one changing it from the regents of the University of Texas to the San Antonio Medical Foundation; and some clarifying amendments, that it would be transferred without compensation, that is, the War Department or the Navy Department could take it back without compensation, in the event of an emergency. The proposal is to establish on the property a medical school by the University of Texas. It is very strongly endorsed by the former Surgeon General of the Army as being a valuable asset to the Brooke Medical Center at San Antonio. So, I move a favorable report of H. R. 2964, with the amendments which I think Mr. Smart has.

The CHAIRMAN. Mr. Elston, I understand the bill comes with the unanimous report of the subcommittee?

Mr. ELSTON. That is correct.

The CHAIRMAN. Without objection, the bill will be favorably reported.

Mr. ELSTON. Now, Mr. Chairman, I would like to yield to Mr. Sikes, who is the author of two other bills and ask him to report on them.

Mr. SIKES. Mr. Chairman, H. R. 3417, introduced by me, would transfer an undeveloped part of the harbor area owned by the War Department now used for harbor defenses at Pensacola to Escambia County. It adjoins property which is owned by Escambia County and which is utilized for public recreational purposes. The property cannot be sold. It is used for the good of the general public. The property is being declared surplus. I seek to transfer this property to Escambia County, to be used for the general public, with the same restrictions, so it cannot be sold and cannot get to the hands of speculators. There are about 700 acres involved in the tract. The War Department has suggested an amendment and I am in accord with the purpose of the amendment.

The other bill, H. R. 3735, would transfer about 600 acres of land in the general area of and on Santa Rosa Island belonging to the War Department to Okaloosa County, for public recreational purposes, with the same restrictions so it could not be sold. The War Department is in accord with the purposes of the bill, because it is intended to make this property available to the general public and it is felt that it can serve its best purpose in that way. Amendments were also suggested by the War Department for its own safeguard, to H. R. 3735, and I am in accord with all the amendments.

The CHAIRMAN. Is this a unanimous report?

Mr. ELSTON. This is a unanimous report, Mr. Chairman, and I move a favorable report.

The CHAIRMAN. Without objection, the bills will be reported favorably.

Now, as a member of subcommittee No. 12, I desire to report H. R. 1544, approved by both the War and Navy Departments, to provide appropriate lapel buttons for widows, parents, and next of kin of men who lost their lives in the armed services of World War II. Unless there is objection, this bill will be reported favorably.

The Chair also wants to bring up H. R. 2993, known as the Corregidor bill, which was formerly taken up in the Military Affairs Committee, awarding increased rank to certain men who were imprisoned with General Wainwright at Corregidor. It is the same bill which was before the committee last year. Is there any objection?

Mr. JOHNSON of California. What is the bill? We don't have a copy here.

The CHAIRMAN. H. R. 2993. If there is any objection, we won't delay any longer this morning.

Mr. KILDAY. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. This bill was proposed by the War Department. In the last Congress, it passed both the House and the Senate, but there was an amendment in the House bill which was passed at the end of the session and the conferees never got together. It authorizes the War Department to appoint a certain number of the men who were

captured in the Philippines as generals, in addition to the ceiling on generals that exists in the general law. These are the men who were taken prisoner with General Wainwright. Some of them were acting as generals. One or two of them had been appointed who were not acting as generals at the time. It is a bill that General Wainwright is very much interested in. As I say, it passed both Houses at the last Congress.

The CHAIRMAN. Is there objection?
(No response.)

The CHAIRMAN. Without objection, the bill will be reported favorably.

Gentlemen, there are four bills that may possibly come to conference between now and a week from Saturday. To refresh your memory, in the event of a conference on these bills, the following are appointed or have been previously appointed, as conferees. For the conference on the promotion bill: Mr. Short, Mr. Cole, the Chair, Mr. Drewry, and Mr. Kilday. In the event of conference on the procurement bill: Mr. Anderson, Mr. Bates, Mr. Bishop, Mr. Philbin, and Mr. Drewry. Possible conference on the terminal leave bill—although my best information is the Senate will not consider that bill—will be Mr. Blackney, Mr. Cole, Mr. Shafer, Mr. Durham, and Mr. Sikes. The conference on the medical services bill: Mrs. Smith, Mr. Shafer, Mr. Anderson, Mr. Rivers, and Mr. Durham. I understand the proposed amendments in the Senate are in the way of clarification, so that in all probability we could accept the amendments. Mr. Smart, of the professional staff, I understand is following it and will keep Mrs. Smith and the member conferees informed.

Now, gentlemen, we come to H. R. 2575, the so-called military justice bill, which is the main business of this morning. When we adjourned last Tuesday the amendments of the gentleman from Texas, Mr. Kilday, were pending. In accordance with our agreement, the Chair now very gladly recognizes the Secretary of War, Mr. Patterson.

STATEMENT OF ROBERT P. PATTERSON, SECRETARY OF WAR

Secretary PATTERSON. Mr. Chairman, I would be very glad to state briefly the views of the War Department on H. R. 2575, the military justice bill. In general, the War Department is in accord with the bill as an improvement on the system of courts martial. There are only two respects in which we do not go along with the provisions of this measure. The first is that there is an omission of the power of review by the Secretary of War on certain discretionary powers of the Judge Advocate General under the bill. That appears in two places—

Mr. SMART. Pages 30 and 31 of the reprint.

Secretary PATTERSON. Pages 30 and 31, the amendments to article 51. As it was set up, the powers of review by the Judge Advocate General on the discretionary power to mitigate, reduce, or suspend sentences, either as part of the original case or later on by virtue of clemency, were subject to the direction of the Secretary of War. The clause "under the direction of the Secretary of War" was stricken, and we suggest to you its restoration. At the present time, of course, sentences are not reviewed at all as to mitigation, reduction or suspension, except by clemency, by the Under Secretary of War. This

is a new provision giving the Judge Advocate General the review of sentences in his discretion. It is a power that I don't know of at all in any system of civilian justice. In civilian justice the trial court that sets the sentence is the final authority on the sentence, except for the Executive's pardoning power. That is certainly true in the United States system of justice and, so far as I know, true of every State, where the pardoning power resides in the chief executive of the State. We have no objection at all to the Judge Advocate General having this power, but I think sound organization requires that this power, like any other power anywhere in the War Department, should come finally to the Secretary of War.

The Secretary of War is fairly held responsible for the operations of the War Department. If he is to be held responsible he should have the authority, final authority, in review of the action of any one up and down the line, particularly on discretionary matters. He can then fairly be held accountable for the results not only in military justice but in their effects upon the discipline of the Army. But if the power is lodged finally and without further recourse in a subordinate official, there is nothing the Secretary of War can do about it. The Congress and the people cannot hold the Secretary of War then responsible for everything within the War Department.

I might express it in other language by saying it is a division of responsibility, instead of fastening a single responsibility upon the head of the Department. So, it seems to me that principles of administration of justice and also principles of sound organization within the Army and within the War Department are both cogent considerations for the restoration of those words.

The other point that I would like to mention has to do with the last 4 sections, pages 44 to 47. Those are organizational sections having to do with the Judge Advocate General's department. The first one provides for a Judge Advocate General with the rank of major general, and assistant with the rank of major general, three brigadier generals, and a commissioned officers strength to be determined by the Secretary of War, but such strength shall not be less than one and a half percent of the authorized active list commissioned-officer strength of the Regular Army; in other words, five generals in the Judge Advocate General's Department and a commissioned officer strength not less than $1\frac{1}{2}$ percent of the commissioned strength of the Regular Army.

We recently had before you, and you approved it and it has been passed by the House, a general promotion bill. We believe that these provisions here run counter to the sections of the general promotion bill. The provision of five generals in the Judge Advocate General's Department is a provision for more generals than their proper share in general officer strength of the Army, much higher than other departments: The Medical Corps, Engineers, Ordnance, and quite a number of other vital services. We believe it would be a mistake to write piece-meal legislation of this kind providing for a certain general officer strength in the Judge Advocate General's Department on a higher basis than for the other branches of the Army.

On the $1\frac{1}{2}$ percent for the total officer commissioned strength in the Judge Advocate General's Department I will say simply this: That would provide 750, on the present authorized strength of the Regular Army of 50,000 officers. One and a half percent of that is 750.

Mr. SHORT. That would be an indication for every other branch to come in and demand a higher percentage, wouldn't it, Mr. Secretary?

Secretary PATTERSON. Yes, sir. The 750 was no doubt set as a result of some letters that came up here from the War Department having to do with our present need for commissioned officers of the Judge Advocate General's Department on a 1,070,000-man army, but the 30,000 regular Army officer strength is by no means geared to a 1,070,000-man army. The required officer strength for our present Army is something over 100,000, of whom we took care of only 50,000 in the Regular Army list.

I think it quite clear that this provision here that there shall be one and a half percent at least of the commissioned strength in the Regular Army had to do with an oversight as between our present needs for a 1,070,000 man army and the lack of relation of that figure to the present authorized strength of the officers of the Regular Army. This will be on any proportionate basis over double strength for that department, as against others.

Mr. ELSTON. May I ask a question right there, Mr. Secretary?

Secretary PATTERSON. Yes, sir.

Mr. ELSTON. The testimony before our subcommittee was that they would need nine-hundred-and-some officers to man the Judge Advocate General's Department under H. R. 2575 as it was submitted by the War Department. One and a half percent is only 750.

Secretary PATTERSON. Well, I can say that 750 would be a proper number if you had 100,000 officers of the Regular Army authorized, or thereabout, based upon say a regular standing force of 1,070,000 men, but that is not the plan under which the War Department has been asking for authorized strength of Regular Army officers. The ceiling was set, and all we asked the Congress was for 50,000. We plan to fill our needs for the balance by the use of temporary officers, National Guard officers, Reserve officers, and officers serving after the conclusion of the war.

Mr. ELSTON. May I ask another question there? In H. R. 2575, the War Department asked for three more generals to comprise the new Judicial Council, in addition to the Judge Advocate General.

Secretary PATTERSON. I can't say. I wasn't familiar with that feature of it, Mr. Elston. I don't see how they can provide a Judicial Council of three general officers in addition to the Judge Advocate General. That would make four. Of course, this amended bill provides for five, but I would say four, too, is too many. You make a fair point, no doubt of that.

Now, the next section will give the Judge Advocate General's Department a separate promotion list. We believe that would be an unfortunate development. As you all know, going back into the history of the Army, there was a separate promotion list for each arm and service down until 1920. It caused great confusion, a great deal of maneuvering to get from a slow list to a fast moving list, which was disruptive of good order. Then, in the National Defense Act of 1920, that was all abolished and there was a single promotion list, with the two exceptions of the Medical Corps and the Chaplains. That, again, is dealt with in the promotion bill that you recently approved and which was passed by the House, and we think dealt with in a proper, sound, salutary way. If we go back again now to the separate promotion lists, we will be asking again for the troubles and

difficulties we had prior to the great reform in that respect that we had in 1920.

I can distinguish the cases of the Medical Corps and the Chaplains from the case of the Judge Advocate General's Department. I think the distinctions will occur to you, too.

The Medical Corps, which has a separate list, is composed of highly professional officers, with very little in the way of flow of traffic between them and the rest of the Army. The same is true of the Chaplains. Once a chaplain in the Army, always a chaplain. There is no flexibility there at all or a shift of an officer from being a chaplain to being an officer in some other line of the Army. That is not true of the Judge Advocate General's Department. I know of many cases myself of officers in the Judge Advocate General's Department who have been infantry officers, then in the Judge Advocate General's Department, then back to the infantry or to the field artillery. In other words, the amalgamation of the Judge Advocate General's Department into the Army is a much firmer proposition than with the Medical Corps or the Chaplains. If we have a separate promotion list for the Judge Advocate General, you will find a great many officers figuring out whether promotion is going to be more rapid there or on the general list, and assignments made in accordance with what the prospects may be for the individual.

We strongly urge that you set up no separate promotion list for the Judge Advocate General's Department. I realize that that was included as a provision in the report of the Committee of the American Bar Association. I treat that recommendation, as all recommendations of that committee, with great respect. The fact remains, however, that that committee was not composed of people who were familiar with the history of the Army—with our experience under separate promotion lists. They, like every other specialist body you get, tell you to drop everything else and concentrate everything on their specialty.

Mr. SHORT. Judge, it might be well for the members of this committee to bear in mind that you are speaking as a former Federal judge, as well as the Secretary of War.

Mr. BATES. Mr. Secretary, did you suggest these changes in the subcommittee hearings?

Secretary PATTERSON. Well, I can't say Mr. Bates. Colonel Dinsmore will know. He has followed this.

Colonel DINSMORE. I didn't hear the question, Mr. Bates.

Mr. BATES. Did the subcommittee have the benefit of such advice as the Secretary has now given the full committee?

Mr. ELSTON. Certainly we had the benefit of advice from the War Department. We gave the War Department every opportunity to come in and be heard, and they came in and they were heard.

Mr. KILDAY. Mr. Chairman, we heard the Under Secretary and General Lawton Collins on this phase of it.

Mr. ELSTON. Yes, but they had the opportunity of presenting any additional testimony they wanted.

Mr. KILDAY. Yes.

Mr. ELSTON. I may say, in response to the Secretary's statement with reference to the American Bar Association, the War Department's Advisory Committee on Military Justice made the same recommenda-

tions. Of course it was suggested by the American Bar Association, but it was actually by virtue of appointment by the War Department. They made the recommendation for a separate Judge Advocate General's Department. It is known as the Vanderbilt Committee.

Secretary PATTERSON. That was the committee I had reference to. I appointed the committee, on the nomination of the President of the American Bar Association. I go along with most of the recommendations contained in the report of that committee. They were eminent lawyers. They were utterly unfamiliar, however, with the experience and the history of the Army with regard to a single promotion list and a separate promotion list. Like all committees, as I say, they told you that everything would be well if you would dignify the position of the people in the specialty that they themselves were in.

Mr. KILDAY. Mr. Chairman—

Secretary PATTERSON. I have never known that to fail.

Mr. KILDAY. At that point, of course this was a committee of lawyers that recommended a separate promotion list for lawyers. The Association of Engineers recommended a separate promotion list for the engineers. The Associations of Dentists recommended or requested a separate promotion list for dentists. So each profession, when they get together, try to take care of themselves.

Secretary PATTERSON. That is right.

Mr. JOHNSON of California. Mr. Chairman, may I ask a question?

The CHAIRMAN. Mr. Johnson of California.

Mr. JOHNSON of California. Isn't it a fact that, in the report of the American Bar Association, they spent about nine-tenths of their time emphasizing this particular point? That is what they think is the crux of the whole reform in the Judge Advocate General's Department: A separate independent system of justice. Explain, if you will, please—I certainly respect your opinion, with all your background and experience in the Army and also in the law—if a separate, independent judiciary is required to render exact justice, why doesn't that apply to the 1,070,000 people in the Army, as well as in civil life?

Secretary PATTERSON. The separate independent system of justice—in order to get away from any suspicion of partiality or bias—is an entirely separate proposition from a separate promotion list. You can have the provisions of this bill, in safeguarding the independence of court martial, which I go along with—you can have the virtues of those provisions without a separate promotion list for Judge Advocate General officers. I don't see any connection between the two.

Mr. JOHNSON of California. Yes, but then you have officers who are untrained in this particular field passing on the competency of men that are in a highly specialized field. This, to me, is the same principle as you have in the Medical Corps.

Secretary PATTERSON. No. The principles of promotion by selection under the officers' promotion bill are applicable to officers of the Judge Advocate General's Department just the same. This is a provision to set up a privileged class of officers. That is what it is.

Mr. ELSTON. In what respect does it make them privileged? It simply sets up a separate promotion list. In what respect do they have any privileges not accorded other officers?

Secretary PATTERSON. They have the privilege of chance of promotion within their own group, with the same results and results that

I think were not happy ones, that were so apparent in the Army situation prior to 1920. The Engineers will be next. The Ordnance officers will be next. You will break it all down, gentlemen.

Mr. ELSTON. They may not be promoted as fast as they were under a general promotion bill.

Secretary PATTERSON. We have these efforts made ever so often. There was a bill introduced in the 1930's to give the Judge Advocate General's Department a separate promotion list. It did not carry. We will have bills for different branches every time, to get them off the single promotion list and have a little list of their own. It has, even so far as they are concerned, unfortunate as well as fortunate results. You will get stagnation up in that list. Then everybody is unhappy about it. I am told that every officer in the Judge Advocate General's Department would immediately be promoted to major or higher on a separate promotion list, as this bill provides—every single one of them. They would all be generals, colonels, lieutenant colonels, or majors. You wouldn't have any one below.

Mr. BROCKS. Mr. Chairman—

Mr. DURHAM. Mr. Chairman—

Mr. BROCKS. Mr. Secretary, what disturbed me was the point you just mentioned: Whether or not instead of being privileged you are actually penalizing them. I don't think they are privileged, but I do think there is a possibility they might be penalized, by putting them in a small group. It is hard for me—and I am sure it is hard for you, a judge—to figure how you can fail to appreciate the fact that this is a specialized service. As you referred to physicians, it is hard for me to distinguish or understand why they couldn't be characterized in that respect as a physician would.

Secretary PATTERSON. Of course, lawyers are a professional class.

Mr. BROCKS. They are highly specialized.

Secretary PATTERSON. No question as to that—not nearly as high specialized or so expert, though, as doctors. There is quite a difference.

Mr. BROOKS. The difference is merely in the degree.

Secretary PATTERSON. You get more lawyers in Congress than you do doctors, for instance.

Mr. CLASON. Mr. Chairman—

Mr. THOMAS. That is why it takes so long to do anything.

The CHAIRMAN. Just a moment. Mr. Clason.

Mr. CLASON. Mr. Secretary, you just made the remark that you understood every person in the Judge Advocate General's Office under this promotion list would be a major or higher.

Secretary PATTERSON. I was told so.

Mr. CLASON. As a matter of fact, under this section 47, you would have the right to authorize the percentage in the grade of colonel, the percentage in the grade of lieutenant colonel, and the percentage in the grade of major. Therefore, you would be in a position at any time to determine the number of majors, and, as a matter of fact, 23 percent at least must be in the grade of captain and 36 percent in the grade of first lieutenant. So, if you felt at any time an unusual or unwarranted number were going to be colonels, lieutenant colonels, or majors, you would have it within your own power to prevent; would you not?

Secretary PATTERSON. Well, I see the provisions you refer to, Mr. Clason. General Dahlquist was the source of my information. He is here.

General DAHLQUIST. What you say is true, Mr. Clason—that the authority is there—but we submit, with the opportunity for the promotion that is offered and with a politically minded group of people, the pressure to fill the vacancies would be tremendous. This bill specifically permits this for the judge advocates, by setting a number of 750. It means that there will be a vacancy in the grade of colonel or higher for every officer who has completed 18 years' service. On the Army promotion list, by seniority alone, they can go down only as 28 years' service. It would mean that for every judge advocate who has over 13 years' service, there would be a vacancy in the grade of lieutenant colonel. As to the vacancies permitted for majors, when all the rest had been promoted, there would be 30 holes yet to be filled.

Mr. ELSTON. General, may I say—

Mr. CLASON. Just a minute.

Mr. ELSTON. Will the gentleman yield?

Mr. CLASON. I would like to ask if he still feels that would give them too many colonels, lieutenant colonels, and majors. The Secretary of War has it in his own hands, in accordance with the provision on page 45, to cut the percentages in half, or by quarters, or cut it all to pieces. So I don't see that there is any strength in your statement.

Mr. KILDAY. Will the gentleman yield?

Mr. CLASON. I would like to have the observation of the General.

General DAHLQUIST. That is all right. That language was copied from the promotion bill.

Mr. CLASON. If that is true, then they would be under exactly the same rules as with other promotion lists.

General DAHLQUIST. Except they have set the authorized strengths. It was our intention and will be our intention to fill the authorized vacancies. The pressure will be on to fill the authorized vacancies.

Mr. CLASON. Certainly, if the Secretary of War felt it was not a fair distribution of officers in the several grades, he would see to it that a proper distribution was made; would he not?

General DAHLQUIST. I would hope that he would.

Mr. CLASON. Surely. On the other proposition, this 1½ percent, that would base it on 50,000 officers. As I understand it, you have over 100,000 officers in the Army.

General DAHLQUIST. That is right.

Mr. CLASON. So that 1½ percent of that would be 1,500. On the basis of a limitation of 1½ percent of the authorized active list commissioned officer strength of the Regular Army, this is only 750. So you still have to cut your strength in two to bring this 1½ percent down to the 750; do you not?

General DAHLQUIST. 50,000 officers couldn't officer an Army of over 450,000 enlisted men, or a total strength of 500,000. One and a half percent of that strength, or 750, would give us a lawyer for every 600 soldiers. I don't know whether this Army is going to fight with lawyers or not.

Now, the letters that were written to Mr. Elston—one signed by Mr. Royall and one signed by General Hoover, on April 28 and 29,

which are on the last page of the hearings—specifically state “for fiscal year 1948.” Both of those letters referred to the number of judge advocates we would need under the Durham bill for a strength of 1,070,000 men. Comparing the problem with other branches, we will require approximately 6,000 doctors for that strength Army; but in the Regular Army the authorized proportion is 3,000. We would require 6,900 engineers, but the authorized part of the Regular Army is something like 2,800. We will require 18,000 infantry officers, but the amount that we have authorized out of the 50,000 Regular Army strength is something over 6,000.

Mr. CLASON. Yes; but you testified yourself, if I remember it correctly, that you would need 900 officers in the Judge Advocate General's Department to carry on with the present force.

General DAHLQUIST. For 1,070,000 men; but 50,000 officers cannot officer a 1,070,000-man Army.

Mr. CLASON. Well, 50,000 cannot, but this is only three-quarters of 1 percent of the number that you are now using.

Mr. ELSTON. General, you are not required to fill those vacancies under this law at all.

General DAHLQUIST. You are required to have not less than 750 Regular Army judge advocates under—

Mr. ELSTON. That is authorized, but you are not required to fill the vacancies. Some vacancies may not be filled for a long period of time.

Mr. GAVIN. Yes, but if they are available, they would make every effort to get them filled.

Mr. KILDAY. The bill specifically says that the strength shall not be less than 1½ percent. It is absolutely mandatory.

Mr. ELSTON. If they are vacant, they don't have to fill them.

Secretary PATTERSON. It seems plain to me, gentlemen, on the size of the officer strength of the Judge Advocate General, the law is as if the figure 750 was written right in there. That is what 1½ percent of 50,000 is. That was taken not with a view to what you will need in the Regular Army, but what you need now with an Army of 1,070,000 men.

Mr. KILDAY. Mr. Chairman—

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. Mr. Chairman, this discussion shows the futility of trying to do something like that. In the committee that worked so hard on the promotion system, where we all understood we were working on a basis of 50,000 permanent Regular Army officers, we never got into a discussion of this kind. Now we come in here to change what we did in a very delicately balanced bill, without full information on the part of those who didn't actively participate, and it throws our entire promotion bill out of balance. It destroys all we did over many weeks of work.

The CHAIRMAN. The Chair would like to ask—I assume there will be no roll call in the House until 10:30 or a quarter to 11. General Eisenhower has asked to appear. I am merely making inquiry as to the time element.

Secretary PATTERSON. I have concluded, Mr. Chairman. I will say simply this, on the provision in section 48 to the effect that all members of the Judge Advocate General's Corps shall perform their duties under direction of the Judge Advocate General: That is a provision

that simply will not work. Members of that corps are assigned to the Chief of Ordnance to do his law work and to the Chief Signal Officer to do his law work. Well, they have to work, when they are assigned that way, under direction of the Chief of Ordnance or the Chief Signal Officer. They cannot work under the direction of the Judge Advocate General in cases like that. So I suggest that that provision also be omitted. I have concluded.

Mr. DURHAM. Mr. Chairman, may I ask the Secretary just one question?

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. Mr. Secretary, isn't the primary objective here one of justice, and not of promotion in this whole field?

Secretary PATTERSON. Yes, sir. I don't think any particular branch of the Army ought to be aggrandized and the positions of the officers made more advantageous than those of other branches.

I might just say, on this provision for five generals: Bear in mind that the Adjutant General has two, the Quartermaster Corps four, Finance one, Medical Corps four, Corps of Engineers three, Ordnance Department three, Chemical Corps one, and Signal Corps one. Here you have a slug of five—above any of those branches of the Army. I am not minimizing the importance of the Judge Advocate General's Department, but these other departments are important, too. Thank you.

The CHAIRMAN. Thank you very much, Mr. Secretary.

General Eisenhower, will you come forward, sir. The Chair will yield to Mr. Elston—or do you desire to make a statement first, General Eisenhower?

-STATEMENT OF GEN. DWIGHT D. EISENHOWER, CHIEF OF STAFF, UNITED STATES ARMY

General EISENHOWER. I should like, unless there are other questions, to cover one point only. This bill, of course, is designed to assure justice to that very small proportion of an Army that commits offenses. In the War Department, as Chief of Staff, I have not a single thing to do with it. This all heads up under the Judge Advocate General and civilians: the Under Secretary of War and the Secretary. My experience in the war was entirely different. It was that of a field commander. I would like to point out first of all that when you people here send a field commander to the field and place upon him the responsibilities of taking care of more than 3,000,000 Americans and using them in winning a victory, you are putting upon his shoulders a terrific responsibility. He is not concerned with this particular small group so much as he is with the morale, the feeling, and the sense of justice that his 3,000,000 men get. That is what he is concerned with.

Now, in the court-martial system, there is of course an exemplary punishment idea which has its effect upon these 3,000,000 men. I should like to relate one little story to indicate very briefly where this court-martial system affects the Army as a whole. We had battled our way up to the frontiers of Germany. It was cold, disagreeable weather. Our great shortages were primarily in gasoline and secondly in cigarettes. A great black market and thievery ring started in Paris. That became known throughout that command. Every time I visited the front and walked along the front, all I heard was, "Gen-

eral, what are you doing about that business? These people stealing our gasoline so we can go no place, and stealing our cigarettes." I kept out of the thing because it was not my primary responsibility to try these men, but I saw that they were getting very severe sentences.

We took great care to publish those so that the boys in the front line knew about it. But that it what was done because the commander had some authority. As quickly as those sentences were all given, after the files were concluded, I went into that group of men, with my judge advocate, and with General Lear, who had been brought over to be the deputy theater commander, and I offered every one of them this: Complete opportunity to exonerate himself if he would volunteer for the front line. I made that offer to every single one of them, including men who had been given 75 years on this thing. I want to point out that 14 of those men who had 15 years or less refused to volunteer for the front line. I am trying to show you that there is a very delicate thing, but a very, very powerful thing always involved in this business and that is the morale of the whole fighting force. The commander in the field is not primarily concerned with the exact handling of details. Admitting that that is important, I want to tell you that my most onerous problem in the war was the administrative burden of giving consideration to court-martial sentences. Every case that involved the death of an enlisted man or the dismissal of an officer had to come to me, and every single week I gave an entire day to the detailed consideration of such cases. If any commander in the future can be relieved of that, he would very much like to be relieved of it.

It is a terrific burden. But all the way along the line, no matter how high you go, finally there must be someone that is in the chain of responsibility, or the men in the field are not going to take it and like it. If they are out there doing their best, from the commander on down to the last private, and it is to be said, "No matter what kind of sentence is given to this man, some staff officer with no responsibility for winning the war, who is not even subject to the supervision of the Secretary of War for the handling of this thing," will pass on it, there is going to be resentment—and very deep resentment. I assure you there will be.

Now, all the way along the line I have no objection to the provisions of this bill, although some of them rather amused me as to what apparently it is believed they will attain; but I do say the Judge Advocate General in exercising his authority must be subject to the supervision of the Secretary of War. As long as that is known, everybody in the field will accept it because they will say "the Secretary of War bears the same responsibility toward winning this thing that we do."

The only other point I want to mention is this: This business of separate promotion lists. Gentlemen, war has become a teamwork job. It is not setting up a bunch of specialists and letting each go his own way and trying to make him independent. We have got to go the other way. We have got to integrate and integrate more and more, if we are going to win wars. Every commander in the field has a series of officers who are highly skilled specialists. I had an armored force officer, for example. You have an officer that is expert in radar. You have an officer that is expert in the procurement of intelligence. You have all sorts of specialists. Each one of them has to be just as skillful in his line as does a medical officer in his line or a judge ad-

vocate in his line. We can't possibly go to this business of giving each one of them a separate promotion list and disturbing or diverting their loyalties from a central idea of the Commander in Chief of all the forces of the United States and the job of winning the war. That is the way it works out. All the rest of the provisions of the bill I accept without any mental reservations at all, but I do think those two are errors.

Mr. ELSTON. Mr. Chairman—

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. General, aren't you assuming this bill takes from the commanding officer all the command authority he now has with respect to court-martial cases? As a matter of fact, the commanding officer still refers the charges for trial.

General EISENHOWER. That is right.

Mr. ELSTON. And has complete control over the investigation and the reference of the case for trial.

General EISENHOWER. That is correct.

Mr. ELSTON. In addition to that, he convenes the court.

General EISENHOWER. That is right.

Mr. ELSTON. He doesn't have to convene the court at all, if he doesn't want to.

General EISENHOWER. Correct.

Mr. ELSTON. He appoints the trial judge advocate.

General EISENHOWER. That is right.

Mr. ELSTON. He appoints the law member and the defense counsel, who must now be qualified under the Judge Advocate General's Department.

General EISENHOWER. That is correct.

Mr. ELSTON. And after the trial, the commanding officer has full authority to approve or disapprove in whole or in part any sentence.

General EISENHOWER. That is right.

Mr. ELSTON. Now, what more authority can a commanding officer ask for?

General EISENHOWER. I am not asking for any more authority for the commanding officer. I am talking about the Secretary of War. When this case finally gets into the War Department and it is reviewed, it is acknowledged that the Judge Advocate General has complete independent review power as to all of its legal features. It has to be legally sufficient, in accordance with the rules of evidence and all the rest of it. It has to have his approval. But when it comes to the mitigating of that sentence I say it has got to be in the chain of authority, to be done by someone that has some responsibility for winning the war, and not just sitting on the outside and exercising his authority independently of the Secretary of War.

Mr. ELSTON. That power hasn't been taken entirely from the Secretary of War.

General EISENHOWER. There was a provision in there, as I saw it, sir: "Under the supervision of the Secretary of War"—a very mild thing, that he is doing this as an agent of the Secretary of War. That was eliminated.

Mr. KILDAY. Pages 30 and 31.

Mr. ELSTON. On page 30, article 51 provides:

The power of the President, the Secretary of War, and any reviewing authority to order the execution of a sentence of a court martial shall include the power

to mitigate, remit, or suspend the whole or any part thereof, except that a death sentence may not be suspended.

The Secretary of War still has that much authority left.

General EISENHOWER. But the secretary——

Mr. ELSTON. The Judge Advocate General sits more or less as a supreme court in the review of cases and passes on questions of evidence and rules of law.

General EISENHOWER. That is right.

Mr. ELSTON. If the Judge Advocate General hasn't the power to mitigate, remit or suspend the whole or any part thereof any sentence without the approval of the Secretary of War, then you might just as well not give him any authority at all.

General EISENHOWER. Oh, I don't know——

Mr. ELSTON. The Secretary of War can still review the case after the Judge Advocate General gets through with it.

General EISENHOWER. Not if the Judge Advocate General has remitted the sentence. There is nothing then that the Secretary of War can do about it. Now, I didn't know the Supreme Court of the United States had the power to mitigate sentences. I thought they reviewed for matters of law. I didn't know they could reduce sentences.

Mr. ELSTON. No; they have a right to review all questions of law.

General EISENHOWER. Certainly, and so does the Judge Advocate General. I advocate and believe in it.

Mr. ELSTON. You have a different system in the Army than you do in the civil courts. In the first place, when you try cases in the civil court you have trained lawyers and judges who preside. In the Army, the courts martial have not been made up of lawyers. They have been made up of persons other than lawyers. One of the most severe criticisms of the Army system was that you had an extreme sentence in one case and a light sentence in the other case.

General EISENHOWER. That is right.

Mr. ELSTON. There has to be some authority that can review those cases and bring about some uniformity. That is the very purpose of this section, so somebody in authority can bring about uniformity and reduce some of the criticism that has prevailed with respect to court-martial cases.

General EISENHOWER. I might tell you, as a personal experience, that my judge advocate all during the war was always against me when I wanted to reduce and mitigate sentences. Personally, I don't believe it is the officers of the Army who are in favor of these tremendously stiff sentences. In any event, I agree that some one should have that power, but it is the duty of the Judge Advocate General to bring that to the attention of the Secretary of War. The Secretary of War is the man you people hold responsible and the President holds responsible. I believe it is altogether wrong to take from his hands a power of this kind and put it in a separate staff officer, saying "There, you can do as you please."

Mr. BATES. Mr. Chairman——

The CHAIRMAN. Mr. Bates.

Mr. BATES. There seems to be quite a good deal of difference of opinion between the committee and the high ranking officers of the War Department. It seems to me this matter ought to be referred back to the committee for further consideration, and I so move——

The CHAIRMAN. Just a moment, Mr. Bates, the Chair, in agreement with the full committee and the chairman of the subcommittee agreed to hear the Secretary of War and the Chief of Staff this morning. The parliamentary situation at that time was this: Mr. Kilday had the floor to offer an amendment—

Mr. GAVIN. Why not offer it?

Mr. VAN ZANDT. Let us get the amendment on the floor.

The CHAIRMAN. Just a moment, are there any questions of General Eisenhower?

Mr. BATES. The only reason, Mr. Chairman, I make the suggestion is because this is a very controversial matter. I can visualize where it may continue on for another hour.

Mr. BROOKS. Mr. Chairman, in that connection, a good deal was said—

The CHAIRMAN. Are there any further questions of the General?

Mr. BROOKS (continuing). As to what other subcommittees have done in the way of work. I am a member of the subcommittee and have seen Mr. Elston work on it. I say this subcommittee has done hard work over a long period of time. You can't laugh off the work of this subcommittee, in its effort to do a real fair job for the full committee and for the Congress. They have done it. I don't think the inference ought to be given that this subcommittee has not tried to do a good job on it.

Mr. KILDAY. Mr. Chairman—

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. It happens that I am a member of both subcommittees. I am not attempting to reflect on the work done by either. We worked hard on both bills. I would like to ask the gentleman from Ohio, with reference to this article 51: Don't you agree that those two provisions are separate? At first you give the power of mitigation, and so on, to the Secretary of War and the reviewing authority on sentences up to dismissal and death. Then you have another provision as to those sentences which are not required to be reviewed under article 50 and not requiring approval or confirmation by the President. In that connection, you are exercising a question of Executive clemency, and, in accordance with our theory of government, the exercise of that Executive clemency should certainly be by an executive officer. In other words, as it now heads up in the War Department, the Under Secretary exercises it, but of course he is an appointee of the President and he is exercising one of the powers of the President, as the head of Government. Should this provision remain in it?

Mr. ELSTON. I stated to General Eisenhower that I think the situation is different than in civil courts, because you have courts martial made up of other than lawyers, and somebody should have the authority. I see no reason why the Judge Advocate General shouldn't have the power to mitigate.

Mr. KILDAY. But in our bill we changed that and required that the Judge Advocate and the defense counsel be lawyers. Also, we give the law member of the court final power on law questions, which he has not heretofore had. All questions of admissibility of evidence have been subject to a vote of the court, whereas under this bill that we are considering we give the law member the absolute right to rule on the admissibility of the evidence and the law questions involved.

Mr. ELSTON. The gentleman from Texas knows we discussed this at great length in the committee and it was the conclusion of the committee that this part of the bill be stricken out.

Mr. KILDAY. I think it is very clumsily worded. I don't think we caught the full meaning of it.

The CHAIRMAN. Are there any further questions of General Eisenhower.

Mr. SHORT. There are two things I wish this committee would get straight and fixed in their minds. The first is in the opinion of the Secretary of War and the Chief of Staff this bill does set up a separate promotion list for the Judge Advocate General. If we are going to do that, it will be an invitation for every branch of the service to come in here and want a separate promotion list. It will disrupt the whole law that has already been passed.

General EISENHOWER. That is my opinion.

Mr. GAVIN. Why not at that point reach a decision.

Mr. SHORT. That, he says, is his opinion. I want to get that fixed in mind.

Another point is that in modern warfare every branch of the service is really composed of specialists. Every branch is specialized.

General EISENHOWER. That is correct.

Mr. SHORT. There should be no favoritism whatever shown any of them.

General EISENHOWER. That is correct.

Mr. SHORT. The second point I want the committee to get fixed in mind beyond any doubt, so we won't argue about it when you gentlemen leave us, is that this bill, if enacted in its present form will take final authority from the Secretary of War, who is held chiefly responsible for the winning of the war.

General EISENHOWER. That is correct, sir.

Mr. SHORT (continuing). And places it in one of the subordinates of the Army.

General EISENHOWER. That is correct, sir.

Mr. SHORT. A separate branch.

General EISENHOWER. Yes.

Mr. SHORT. That is all I want to say.

The CHAIRMAN. Are there any further questions?

Mr. VAN ZANDT. Let us offer the amendments.

The CHAIRMAN. Thank you very much.

The parliamentary situation was: The Chair had recognized Mr. Kilday to offer an amendment. A substitute motion is in order.

Mr. KILDAY. Mr. Chairman, a parliamentary inquiry—

Mr. ELSTON. Mr. Chairman, before Mr. Kilday offers that amendment, I would like to say, as to the section which the Secretary seems to take serious objection to, striking out the words "but the power to mitigate or remit shall be exercised by the Judge Advocate General under the direction of the Secretary of War", I don't think the committee was so adamant and firm on that that they would feel like insisting on it in any event. So far as I am concerned, I would be willing, if the other members of the subcommittee are willing, that those words be reinserted, so as to give the Secretary the power.

Mr. BROOKS. What page is that on?

MR. ELSTON. Page 30—I don't think that is a matter of any tremendous consequence, because we give the Judge Advocate General a great deal more authority than he had before, and if the Secretary wants to retain the power in all cases to mitigate or remit sentences I personally don't have any serious objection to it. I would like to say it is agreeable to me that those words be reinserted, if it is agreeable to the other members of the subcommittee.

THE CHAIRMAN. The chairman of the subcommittee makes unanimous-consent request to change the provision on page 30. Is there objection?

MR. KILDAY. The same applies on page 31, line 8?

MR. ELSTON. Well, yes.

MR. BATES. Mr. Chairman, a question for information—

MR. ELSTON. That disposes of one of the questions.

THE CHAIRMAN. Mr. Bates—

MR. SHORT. You include the provision on page 31?

MR. ELSTON. Yes.

THE CHAIRMAN. The changes suggested by the chairman of the subcommittee are adopted.

MR. KILDAY. A parliamentary inquiry, Mr. Chairman.

THE CHAIRMAN. Yes, sir.

MR. KILDAY. I propose to offer an amendment to strike out sections 46, 47, 48, and 49. Should that amendment not prevail, I propose to offer two amendments to those sections. Now, my question is whether I should offer the perfecting amendments first or the motion to strike the complete sections?

THE CHAIRMAN. The Chair is of the opinion that the perfecting amendments should be offered first.

MR. KILDAY. Then, whatever may happen to them, an amendment would still be in order to strike the four sections?

THE CHAIRMAN. That is correct.

MR. KILDAY. I offer an amendment, on page 44, line 22, to strike out section 46 as it now appears in the committee print and to substitute therefor the following language:

SEC. 8. JUDGE ADVOCATE GENERAL'S DEPARTMENT.—The Judge Advocate General's Department shall consist of the Judge Advocate General with the rank of major general, such assistants judge advocate general and such number of general officers in the grades of major general or brigadier general as the Secretary of War may from time to time determine to be necessary to meet the needs of the service, and active list commissioned-officer strength of officers in grades from colonel to first lieutenant as may from time to time be determined to be necessary by the Secretary of War and in addition warrant officers and enlisted men in such numbers as the Secretary of War shall from time to time determine to be necessary: *Provided*, That no officer shall hereafter be assigned to the Judge Advocate General's Department unless he be an officer admitted to the practice of law in a Federal district or higher court or in the highest court of a State of the United States.

This is designed to eliminate the question that Judge Patterson discussed of 750 judge advocate officers out of a total of 50,000 now authorized.

MR. SHORT. You say nothing about percentage.

MR. KILDAY. That is right. It would place the Judge Advocate General's Department of the Army on the same basis as all other

services under the bill that we have already passed for promotion and allocation of officers to branches and services.

Mr. DURHAM. Is that the same provision that is in the War Department's bill?

Mr. KILDAY. I am not sure. But it would bring this bill into line with the promotion bill which has been passed.

Mr. SMART. It is not in the War Department bill.

The CHAIRMAN. Is there any discussion on the amendment?

Mr. ELSTON. Mr. Chairman, it is just one step to take out of this bill a separate Judge Advocate General's Department. Now, the 1½ percent would provide for 750 officers. They do not all have to be appointed immediately. As a matter of fact, the War Department told us they needed 937 officers. This is less than the amount the War Department itself suggested. It may be years before the vacancies would be filled. They would be filled along with vacancies in the other branches of the service, as they saw fit to fill them. It is not necessary that it be taken out. You come down to the question: Do you or do you not want a separate Judge Advocate General's Department. Do you want a separate department to administer justice? I appreciate all these problems of command, and so forth, but the commanding officer still has all of the things that we have indicated to the committee in our previous statement and indicated here this morning.

The subcommittee considered this phase of the bill more carefully than anything else and discussed it I believe more at length than anything else. It reached the conclusion, with the exception of one vote, that we should have the separate system in the Army.

Mr. KILDAY. Will the gentleman yield?

Mr. ELSTON. Be glad to.

Mr. KILDAY. It is correct, though, in the subcommittee, when we voted on the amendment, we did not have before us the number of officers to be assigned to the Judge Advocate General's Department. Nor did we have the percentages. The only vote we took was as to whether we should incorporate into the bill to be reported to the full committee the substance of the similar provision in the Durham bill, with the understanding the number would be arrived at by the chairman and Mr. Smart.

Mr. ELSTON. That is correct.

Mr. KILDAY. So we did not actually pass on the number of officers to be assigned to the Judge Advocate General's Department.

Mr. ELSTON. But there is nothing inconsistent, in the 1½ percent, in the testimony that was offered to the committee.

Mr. KILDAY. The point I am making is, you referred to the fact that this had been discussed by the committee and carefully arrived at. The fact is we did not vote on the number to be allocated to the Judge Advocate General's Department. We only voted on whether this principle should be incorporated in the bill.

Mr. ELSTON. That is true, but we have been more favorable than the War Department itself suggested. We say 750. They said 937.

Mr. BROOKS. We discussed it at great length. We went all over the ramifications and features of it. Mr. Kilday was present at the time. He entered into the discussion freely. The idea was to put in a percentage, rather than a number—

Mr. ELSTON. That is right.

Mr. BROOKS (continuing). Because it would vary up and down, according to the size of the Army and the needs of the service.

Mr. KILDAY. But we never voted on the percentage.

Mr. CLASON. Mr. Chairman—

The CHAIRMAN. Just a moment. The committee will go into executive session.

(The following proceedings were taken in executive session.)

The CHAIRMAN. The amendment of the gentleman from Texas, Mr. Kilday, is pending. The Chair recognizes Mr. Johnson of California, who has asked to be recognized.

Mr. JOHNSON of California. I want to ask Mr. Elston a question. Isn't it a fact that, under the bill as we have it before us, the Secretary of War is still over the Judge Advocate General's Department?

Mr. ELSTON. Yes.

Mr. JOHNSON of California. Yet the promotion list is out of balance with the rest of the Army. He can refuse to fill those vacancies.

Mr. ELSTON. That is correct. Mr. Clason referred to the section of the bill.

Mr. KILDAY. This doesn't refer to that. This is the over-all number. This provision, I might say to the gentleman from California, is on the over-all number. I do propose another amendment with reference to the question of promotion. This is only as to whether an arbitrary 1½ percent of your 50,000 officers shall be allocated to the Judge Advocate General's Department.

Mr. SIKES. Let us vote.

The CHAIRMAN. I may say to some of the gentlemen, the lawyers have us in quite a fix this morning and I propose to play it out with them.

Mr. DURHAM. Mr. Chairman—

The CHAIRMAN. The Chair recognizes Mr. Durham.

Mr. DURHAM. We have had expressions of opinion throughout the country on this point under discussion here. The American Bar Association recommended this provision which is in the bill. The American Legion, the Veterans of Foreign Wars, and every other service organization I think in the country recommended this provision. The main objective I think in this whole thing was the need of some kind of system of military justice which of course would be independent. It would be a public tribunal which would weigh facts and law. That is what this subcommittee has been trying to work out.

Now, this question of promotion I think is something that can be solved. That is a question that can be solved.

Now, the policy here was to bring in the Secretary of War and also the head of our whole Army. I think, if we are going into this question again, this committee should hear some witnesses that appeared over the last year and a half in favor of this provision. I don't know how the chairman feels about that, but—

Mr. CLASON. Would the gentleman yield for a question?

Mr. DURHAM. If the committee is not thoroughly familiar with this problem, let them hear some of those witnesses. It has been hashed all over the country. Every group of people that I know, except the War Department, is in favor of this provision.

Mr. CLASON. Would the gentleman yield for a question?

Mr. DURHAM. Yes.

Mr. CLASON. The purpose of our committee is to attempt to get court martial set up that would mete out fair justice, based upon the crime that the man has committed. General Eisenhower has pointed out, in his own statement I think, that oftentimes they handed out sentences overseas that were way out of proportion to anything the defendant had done.

Now, Mr. Norblad, who is a member of the committee and has been in the Judge Advocate General's Department and served in connection with these courts martial—and every other person that has served on a court martial—stated that in his opinion the Judge Advocate General's group ought to be a separate promotion group and they ought to be taken wholly out of the control insofar as position or other influence as respecting trials are concerned, of line officers.

Mr. DURHAM. The majority of people that the American Bar Association heard before that committee in my State—I attended the hearings—were people that had had experience in the Judge Advocate General's Department.

Mr. CLASON. And every veterans' organization came up here with men that had served, and they gave their experience. Every one of them, to a man, stated that they ought to have a separate promotion list. When we have men like Mr. Norblad, who said his own commanding officer attempted to censure him for what he had done—

Mr. KILDAY. That is all taken care of in this bill. You are not discussing the amendment before the committee. We have made it a court-martial offense for any of those things to be done or attempted, in other portions of the bill.

Mr. CLASON. Yes.

Mr. KILDAY. Let us separate the thing—

Mr. CLASON. Just a second, before I yield for a speech.

Mr. KILDAY. Discuss this issue. This is only the 1½ percent.

Mr. CLASON. Wait, I would like to finish my talk before you start yours. My proposition is simply this: Every one of these witnesses came in and said the best way to accomplish this, in their opinion, was to have a separate promotion list. That was the only way they saw we could have an impartial and fair court-martial system. That is the reason I think all of us felt this way about.

Mr. KILDAY. Will the gentleman name one witness who was not a lawyer who took that position?

Mr. CLASON. I don't know what their position was.

Mr. KILDAY. Every one was a lawyer.

Mr. CLASON. I wouldn't say that.

Mr. ELSTON. Will the gentleman yield?

Mr. DURHAM. Mr. Chairman—

The CHAIRMAN. Mr. Durham.

Mr. DURHAM. I want to ask the chairman how many officers were allotted under this new authorization.

Mr. ELSTON. You mean under the 50,000?

Mr. DURHAM. By the War Department.

Mr. ELSTON. 937.

Mr. DURHAM. I mean, not under the bill, but allotted at the present time under the authorized strength. What is the number?

Mr. ELSTON. I don't recall the number.

Mr. DURHAM. It was a very small number, wasn't it.

Mr. KILDAY. Two-hundred-some.

Mr. DURHAM. So this question of whether or not it is going to be 740 or 900 authorized, in either one of these amendments, is absolutely absurd.

Mr. ELSTON. Mr. Chairman, I think we ought to vote on this this morning without too much discussion. I don't want for a minute to prevent free discussion, but I am hopeful we can vote on it this morning before the bell rings. Since this bill has been reported out, the press of the country and various associations—veterans' associations and others—have expressed unanimous approval of it. The only disapproval comes from the War Department itself. Just this morning the chairman received a wire, and I also received a wire which is brief, and I would like to read it. It is from the Judge Advocate's Association, that is made up of men who have served as judge advocates in the Army:

This association has observed with deep satisfaction the action of the legal subcommittee in bringing to your full committee a report relative to changes in the military justice system. This in our opinion is the finest study ever made on this subject. The recommended bill reflecting many War Department recommendations will go far to eliminate future criticism both just and unjust. The concluding sections strengthening the Judge Advocate General's Corps are vital not only to make the system work but to free command in the future from the charge which we know too often to have been justified that justice dominated by command is something less than true justice. We hope you adopt unanimously your subcommittee's report.

Brig. Gen. RALPH G. BOYD,

President of the Judge Advocates Association.

(The wire received by the chairman is as follows:)

BOSTON, MASS., July 14, 1947.

HON. CHARLES H. ELSTON,

House Office Building, Washington, D. C.

We have wired Chairman Andrews as follows: This association has observed with deep satisfaction the action of the legal subcommittee in bringing to your full committee a report relative to changes in the military justice system. This in our opinion is the finest study ever made on this subject. The recommended bill reflecting many War Department recommendations will go far to eliminate future criticism both just and unjust. The concluding sections strengthening the Judge Advocate General's Corps are vital not only to make the system work but to free command in the future from the charge which we know too often to have been justified that justice dominated by command is something less than true justice. We hope you adopt unanimously your subcommittee's report.

Brig. Gen. RALPH G. BOYD,

President, Judge Advocates Association.

NEW YORK, N. Y., July 30, 1947.

HON. WALTER G. ANDREWS,

Chairman Armed Services Committee,

House of Representatives, Washington, D. C.

The special committee on military justice of the Association of the Bar of the City of New York believes that proper administration of military justice requires the creation of an independent Judge Advocate General's Department and the removal of the processes of military justice from the control of command. The committee on military justice of the New York County Lawyers Association, of which Mr. George Spiegelberg is chairman, have authorized me to state that they are in full agreement. We would appreciate your transmitting our views to your committee.

FREDERICK V. P. BRYAN, *Chairman.*

Mr. ELSTON. Mr. Chairman, all these amendments go to one thing and that is whether or not you are going to have an independent Judge

Advocate General's Department. In civil life you wouldn't think of mixing the judicial with the executive departments, because you can't obtain proper justice if you are going to scramble the departments. You have to have a separate department.

It is our studied opinion and considered opinion that you can't have military justice properly administered unless you have the separate Judge Advocate General's Department. It is the opinion of everybody except the War Department.

In my judgment, we have not taken from command sufficient authority so that they would be unable in time of war or at any other time to maintain discipline. I believe it is a good bill, and I hope we can vote on these amendments.

Mr. SHORT. Mr. Chairman—

The CHAIRMAN. The Chair will yield briefly to Mr. Short.

Mr. SHORT. The first thing I want to say, Mr. Chairman, is I think his subcommittee has done a marvelous job. They have studied as long and as hard as any other subcommittee of this full committee. I have no better friend in Congress and there is no man I think more highly of than Charlie Elston. I don't want to oppose him. Certainly, I am in sympathy with the provisions of this measure. We all want justice meted out, and we want to equalize sentences. - I feel there is a great need of it, as every one of you do, but I don't want to rush through here in the last minute and do something that is ludicrous and will make us the laughing stock. We have already gone on record, in the promotion bill, of setting up a uniform system of promotion, with the one-half of 1 percent provision of the authorized active strength of officers in all branches of the armed services—and I mean the Army, the Navy, and Marine Corps. There was a unanimity of opinion. There was fundamental agreement between the branches of the Service. The bill was reported unanimously by our subcommittee, that also worked long and hard on that. Now, then, to come in here and set up 1½ percent of the authorized active commissioned officer strength in the Judge Advocate General's Department—which is giving them three times as many officers as any other branch of the service—simply runs counter to the bill we have already passed.

Mr. KILDAY. Will the gentleman yield?

Mr. SHORT. Just a minute, and I will; I will be glad to.

I think a lot of the confusion here this morning in the mind of my friend from Massachusetts, Mr. Clason, is: You are failing to distinguish between the actual and the authorized strength of the services. It is true that we have 1,070,000 men in our Army today, with over 130,000 officers, but the authorized strength of officers in the Regular Army is 50,000, which can man only an army of half a million. The truth of the matter is we have only 37,500 officers in the Regular Army today. We don't have our authorized strength. That is the fundamental point.

Mr. BROOKS. Will the gentleman yield?

Mr. SHORT. Yes.

Mr. BROOKS. If the subcommittee which had reported the original bill had allowed free latitude of discussion, like we are having today, I don't believe this committee would have reported that out as it was.

Mr. ELSTON. And you remember, we raised the question on the floor that this was coming.

Mr. BROOKS. Our position was never allowed to come out at all.

Mr. SHORT. I don't know of any one who was shut off. I know the gentleman from Louisiana thinks he is shut off by every chairman who presides over a committee.

Mr. BROOKS. I know I was shut off, and I know there was some opposition.

Mr. SHORT. I gave you every opportunity to be heard. I think the gentleman from New York, Mr. Cole; Mr. Vinson; Mr. Andrews; and the gentleman from Texas, Mr. Kilday, who served on both of these committees, will agree that what I said here is true.

You are going to set up a separate promotion list, and it is going to destroy the whole promotion system.

Mr. KILDAY. I agree with that. We are confusing two issues. I am as strong for revising military justice as anybody, but that has no relationship to the number of officers who should be permanent regular officers in the Judge Advocate General's Department. I am not saying that we should revise the military justice set-up when I urge the adoption of the amendment. It has no reference to the administration of military justice.

Mr. ELSTON. Will the gentleman yield to me?

Mr. KILDAY. Yes.

Mr. SHORT. Sure.

Mr. ELSTON. If we are going to report the bill out, we have got to fix a percentage. Now, the promotion bill will be in conference. This bill will be conference, if we report it out and it passes the House. That perhaps is something that can be worked out later. I think we came to that conclusion at the time we reported the promotion bill out.

Mr. SHORT. That is true.

Mr. ELSTON. We raised the question on the floor.

Mr. SHORT. Yes.

Mr. ELSTON. When this question was before us.

Mr. SHORT. Yes.

Mr. ELSTON. I said we would not take the time that day, because I knew you wanted to get the bill out.

Mr. SHORT. That is right.

Mr. ELSTON. I discussed the situation with the chairman, and you, Mr. Short—

Mr. SHORT. Yes.

Mr. ELSTON. To have an open discussion of the problem later on.

Mr. VAN ZANDT. Let us vote.

The CHAIRMAN. The question is on the amendment proposed by the gentleman of Texas, Mr. Kilday. All those in favor of the amendment will raise their right hands. The clerk will count them.

(Hands raised.)

The CHAIRMAN. I will vote Mr. Vinson aye, by his proxy.

Those opposed.

(Hands raised.)

Mr. ELSTON. I will vote Mr. Rivers no. I have his proxy.

Mr. BROOKS. I will vote Mr. Sikes no.

Mr. HARLOW. Nine voted aye, sir, and fifteen voted against.

The CHAIRMAN. The vote is 15 nays and 9 ayes, so the amendment is rejected.

Mr. KILDAY. I offer an amendment, Mr. Chairman—

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. On page 46, line 15, changé the period to a colon and add the following proviso:

Provided, That the promotion of officers whose names are carried on the Judge Advocate General's promotion list shall be no faster than the officers whose names were immediately adjacent to theirs on the Army promotion list prior to the establishment of the Judge Advocate General's promotion list, and in order to insure this the Secretary of War shall limit the authorized number in each grade on the Judge Advocate General's promotion list so that the junior officer in the grade of colonel, lieutenant colonel, and major shall have as many "years' service" creditable for promotion purposes as the junior officer in each of these grades on the Army promotion list.

This is designed to eliminate the question, discussed by Judge Patterson, of more rapid promotion—

Mr. BROOKS. Will it guarantee they will have the same promotion as the other services? Before the war they had less promotion than the combat branches of service.

Mr. KILDAY. This imports into the Army the equivalent of the Navy running mate system. He would be promoted no faster and no slower than his opposite number in the line of the Army. That is the whole thing.

Mr. VAN ZANDT. Let us vote.

Mr. ELSTON. Mr. Chairman, just one word on it. It all comes down to the same thing we have been discussing. We can discuss it for hours and get no further. I submit all these amendments go to the same thing and should more or less be considered together.

Mr. VAN ZANDT. Vote.

The CHAIRMAN. The question is on the last amendment offered by the gentleman from Texas, Mr. Kilday. All those in favor will raise their right hands.

(Hands raised.)

The CHAIRMAN. The Chair will vote Mr. Vinson aye.

Those opposed will register by raising their right hands.

(Hands raised.)

Mr. ELSTON. I vote Mr. Rivers no.

Mr. BROOKS. I vote Mr. Sikes No.

Mr. HARLOW. 14 nays; 10 ayes.

The CHAIRMAN. 14 in the negative and 10 in the affirmative. The amendment is rejected.

Mr. KILDAY. I offer a motion.

The CHAIRMAN. Mr. Kilday.

Mr. KILDAY. I move to strike out sections 46, 47, 48, and 49.

Mr. VAN ZANDT. Vote.

The CHAIRMAN. A brief statement by the gentleman from Texas striking out sections 46, 47, 48, and 49, on pages 44 to 47, inclusive.

Mr. ELSTON. That would simply strike out the section creating a separate Judge Advocate General's Department.

Mr. KILDAY. That is correct. It would have the effect of refusing to create a separate Judge Advocate General's Department. I am ready to vote.

The CHAIRMAN. All those in favor of the amendment will raise their right hands.

(Hands raised.)

The CHAIRMAN. The Chair votes Mr. Vinson aye.

Those opposed raise their right hands.

(Hands raised.)

Mr. ELSTON. I vote Mr. Rivers no.

Mr. BROOKS. I vote Mr. Sikes no.

Mr. HARLOW. 14 nays; 9 ayes.

The CHAIRMAN. The motion is rejected.

Any further amendments, Mr. Kilday?

Mr. KILDAY. No, sir.

Mr. ELSTON. I move a favorable report, Mr. Chairman.

The CHAIRMAN. The chairman of the subcommittee, Mr. Elston, moves a favorable report on the bill.

Mr. ELSTON. As amended.

The CHAIRMAN. As amended by the chairman—

Mr. SMART. Mr. Chairman, there are a few corrective amendments.

Mr. ELSTON. There are a few corrective amendments, of no consequence.

The CHAIRMAN. All those in favor of reporting the bill favorably will raise their hands—

Mr. GAVIN. With the corrective amendments.

The CHAIRMAN. With the amendments.

(Hands raised.)

The CHAIRMAN. The Chair votes Mr. Vinson aye.

Mr. ELSTON. I vote Mr. Rivers aye.

Mr. BROOKS. I vote Mr. Sikes aye.

The CHAIRMAN. The bill is reported.

